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NEW YORK
STATE DEPARTMENT OF HEALTH

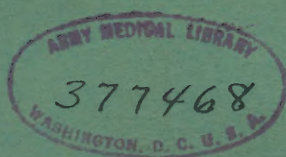
EDWARD S. GODFREY, JR., M.D.

Commissioner

THE PUBLIC HEALTH LAW

Revised to

December 31, 1944



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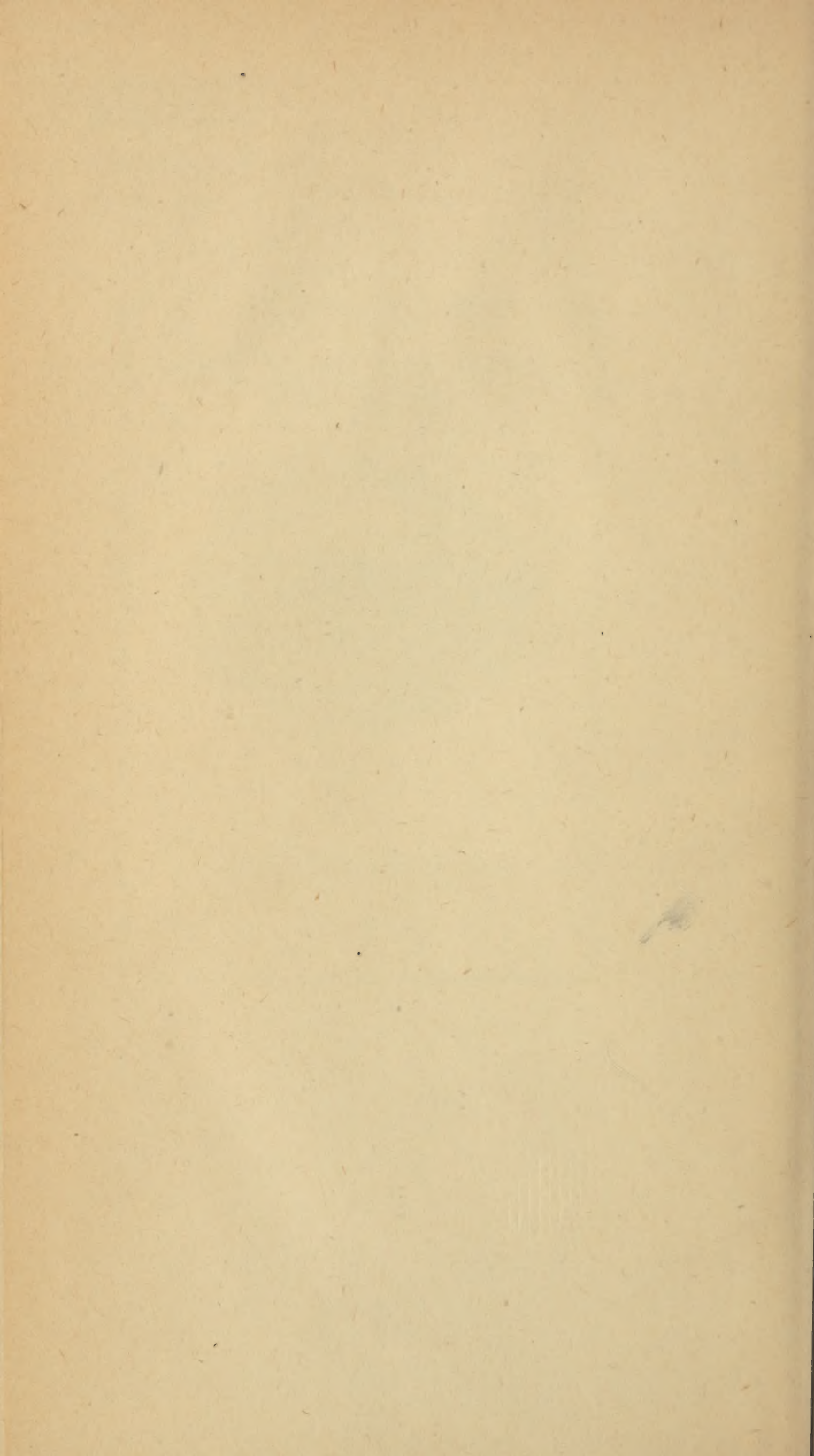
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STATE DEPARTMENT OF HEALTH

EDWARD S. GODFREY, JR., M.D.

Commissioner

THE PUBLIC HEALTH LAW

Revised to

December 31, 1944

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NEW YORK
STATE DEPARTMENT OF HEALTH

EDWARD S. COOPER, JR., M.D.
New York, N.Y.

Commissioner

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THE PUBLIC HEALTH LAW

Revised to

December 31, 1944

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THE PUBLIC HEALTH LAW

RELEVANT PUBLICATIONS

The Sanitary Code and Administrative Rules and Regulations Extracts from Other New York State Laws Relating to Public Health

Page	Article
1	I. Short Title
2	II. State Department of Health
17	II-A. Maternity, Infancy and Child Hygiene
18	II-B. State Aid to Counties
20	II-C. Federal Aid for Maternal and Child Health Service, Care and Treatment of Chronically Sick and Other Public Health Work
23	III. Local Boards of Health
47	V. Potable Waters
4	V-A. Joint Disposal of Sewage
63	VIII-A. The Licensing and Regulation of Midwives
65	XIV. Embalming and Undertaking
71	XIV-A. Practice of Funeral Directing, Undertaking and Embalming
79	XV. Sanitary Conditions in Hotels
79	XVI. Preservation of Life and Health, Cadavers for Medical and Surgical Study
80	Vaccination of School Children
81	Sanitary Conditions in Buildings
83	Sanitary Conditions in Buildings
84	Cadavers
87	Funeral Directors
92	The Sanitary Code and Administrative Rules and Regulations
93	Extracts from Other New York State Laws Relating to Public Health
93	XVI-A. State Tuberculosis Hospitals
95	XVII. Cleanliness in the Preparation and Service of Food
99	XVII-A. Suppression of Certain Nightwork (Houses of Prostitution, etc.)
101	XVII-B. Regulation of Certain Contagious Diseases (Venereal Diseases)
105	XVIII. State Institute for the Study of Malignant Diseases
107	XVIII-A. Cancer Control
107	State Institutions in the Department of Health
114	XIX. Vital Statistics
124	County Board of Health
132	Uniform National Drug Act
141	Live Tuberculous Microorganisms or Viruses
141	Index

PUBLIC HEALTH LAW

Table of Contents

Article	PAGE
I. Short Title.....	5
II. State Department of Health.....	5
II-A. Maternity, Infancy and Child Hygiene.....	17
II-B. State Aid to Counties.....	18
II-C. Federal Aid for Maternal and Child Health Service, Care and Treatment of Crippled Children and of Other Public Health Work.....	20
III. Local Boards of Health.....	22
V. Potable Waters.....	47
V-A. Joint Disposal of Sewage.....	58
VIII-A. The Licensing and Registration of Midwives.....	62
XIV. Embalming and Undertaking.....	65
XIV-A. Practice of Funeral Directing, Undertaking and Embalming.....	71
XV. Sanitary Conditions in Hotels.....	79
XVI. Preservation of Life and Health, Cadavers for Medical and Surgical Study...	79
Vaccination of School Children.....	80
Sanitary Condition of Bathing Establishments.....	81
Institutions for Children.....	83
Cadavers.....	84
Tuberculosis.....	87
Medical Students Hospital Privileges.....	92
Iron Stairways on Certain Buildings.....	92
Fire Alarm Boxes on Certain Buildings.....	93
XVI-A. State Tuberculosis Hospitals.....	93
XVII. Cleanliness in the Preparation and Service of Food.....	98
XVII-A. Suppression of Certain Nuisances (Houses of Prostitution, etc.).....	99
XVII-B. Regulation of Certain Contagious Diseases (Venereal Diseases).....	104
XVIII. State Institute for the Study of Malignant Diseases.....	106
XVIII-A. Cancer Control.....	107
XIX. State Institutions in the Department.....	107
XX. Vital Statistics.....	114
XXI. County Mosquito Extermination Commission.....	128
XXII. Uniform Narcotic Drug Act.....	132
XXIII. Live Pathogenic Microorganisms or Viruses.....	141
Index.....	143

THE PUBLIC HEALTH LAW

(L. 1909, chap. 49, constituting chap. 45 of Consolidated Laws.)

ARTICLE I

Short title

Section 1. Short title. This chapter shall be known as the "Public Health Law."

ARTICLE II

State department of health *

- Section 2. State department of health; commissioner of health; deputy.
- 2 $\frac{1}{2}$. Functions, powers and duties of department.
 - 2-a. Public health council.
 - 2-b. Sanitary code.
 - 2-c. Enforcement of sanitary code.
 3. Compensation of officers and employees.
 - 3-a. Divisions.
 4. General powers and duties of commissioner.
 - 4-a. Sanitary districts; district state health officers; public health nurses.
 - 4-b. Duties of commissioner with respect to laboratories.
 - 4-c. Duties of commissioner with respect to hospitals for contagious diseases.
 - 4-d. Grants, gifts and bequests.
 5. Laboratory supply stations.
 - 5-a. Regulation and control of autopsies.
 6. Nuisances.
 - 6-a. Milk control and inspection.
 - 6-b. Powers, functions and duties of commissioner of health.
 - 6-c. Powers of commissioner of health relating to the importation of milk and cream; permit; penalty.
 - 6-d. Emergency measures to protect milk supply.
 7. Overflow of water from the canals.
 8. Employment of local boards and experts.
 9. Examination and inspection of public works.
 10. Acquisition of land.
 11. Power of commissioner where board of health fails to appoint a qualified health officer.
 12. Annual report.
 13. Tenement houses in cities.
 14. Inspection of state institutions.
 15. State board of health to mean department of health.
 16. Pending actions and proceedings not affected. (Repealed.)
 17. Violations of health laws or regulations.

§ 2. State department of health; commissioner of health; deputy.* There shall continue to be in the state government a department of health. The head of the department shall be the commissioner of health, who shall be a physician, a graduate of an incorporated medical college, of at least ten years' experience in the actual practice of his profession, and of skill and experience in public health duties and sanitary science and who shall be appointed by the governor, by and with the advice and consent of the senate

* See State Departments Law, § 340.

and hold office until the end of the term of the governor by whom he was appointed and until his successor is appointed and has qualified. The present commissioner of health shall be the head of such department and shall hold office until the expiration of his present term and until his successor is appointed and has qualified. If, prior to the expiration of such present term, a vacancy shall occur or exist in the office of the commissioner of health it shall be filled by appointment by the governor, by and with the advice and consent of the senate, for a term expiring with that of the governor by whom the appointment was made. During his term of office he shall not engage in any occupation which would conflict with the performance of his official duties. The commissioner of health shall appoint and at pleasure remove a deputy commissioner, who shall be a physician actively engaged in the practice of his profession in this state for at least five years. The deputy shall perform such duties as shall be prescribed by the commissioner. (Amended by L. 1913, ch. 559, and L. 1927, ch. 48.)

§ 2½. **Functions, powers and duties of department.*** All the functions of the state department of health and of the office of commissioner of health and all their powers and duties, which were transferred to the department of health by section three hundred and forty-one of the state departments law or shall have been prescribed by law when this section as hereby enacted takes effect, whether in terms vested in such department, in the commissioners of health, in the public health council or a committee, member or officer thereof, shall continue to be vested in the department of health continued by this chapter and shall continue to be exercised and performed therein by or through the commissioner of health or the appropriate council, division, bureau or officer of such department as prescribed by or pursuant to law, together with such functions, powers and duties as hereafter may be conferred or imposed upon such department by law. All functions exercised by the state engineer and surveyor, prior to January first, nineteen hundred and twenty-seven, relating to the approval of plans for sewers, sewer extensions, sewerage systems and sewage and waste treatment or disposal works, now being exercised by the department of public works pursuant to section two hundred and twenty-two of the state departments law, are hereby assigned and transferred to the department of health and hereafter shall be exercised therein by or through the commissioner of health or the appropriate officer, division or bureau thereof pursuant to law, but the assignment of such functions shall not be deemed to authorize or require the approval by the department of health of plans for sewage and sewage disposal at state institutions. All the provisions of this chapter shall apply to the department of health continued by this chapter as hereby amended and to the commissioner of health, the public health council and to the divisions, bureaus and officers in such department. (Added by L. 1927, ch. 48; amended by L. 1928, ch. 436.)

§ 2-a. **Public health council.** There shall continue to be in the department a public health council to consist of the commissioner of health, and eight members hereinafter called the appointive members, to be appointed by the governor, of whom at least four shall be physicians, and one shall be a sanitary engineer. All of the physicians so appointed shall have had training or experience in sanitary science, and at least two of the said physicians shall be physicians engaged in the active clinical practice of medicine for a period of at least five years prior to their appointment. The terms of office of members shall be six years except that the initial term of one of the appointive members shall be for three years from January first, nineteen hundred thirty-six. Vacancies shall be filled by appointment for the unex-

* See State Departments Law and Public Works Law.

pired term. The present members of the council shall continue in office until the expiration of their present terms and until their successors are appointed and have qualified. The public health council shall meet as frequently as its business may require, and at least twice in each year. The governor shall designate one of the members of the public health council as its chairman. The commissioner of health upon the request of the public health council shall detail an officer or employee of the department of health to act as secretary of the public health council, and shall detail from time to time such other employees as the public health council may require. The public health council shall enact and from time to time may amend by-laws in relation to its meetings and the transaction of its business. The members of the public health council other than the commissioner of health shall each receive an annual salary of one thousand dollars and all members shall be reimbursed for their reasonable and necessary traveling and other expenses incurred in the performance of their official duties. (Added by L. 1913, ch. 559; amended by L. 1927, ch. 48, and L. 1935, ch. 615.)

§ 2-b. **Sanitary code.** Subject to approval by the commissioner of health, the public health council shall have power by the affirmative vote of a majority of its members to establish and from time to time amend and repeal sanitary regulations, without discrimination against any licensed physicians. The regulations so established shall be called the sanitary code. The sanitary code may deal with any matters affecting the security of life or health or the preservation and improvement of public health in the state of New York, and with any matters as to which jurisdiction is hereinafter conferred upon the public health council. The sanitary code may include provisions regulating the practice of midwifery* and for the promotion of health in any or all Indian reservations. Every regulation adopted by the public health council shall state the date on which it takes effect, and a copy thereof, duly signed by the secretary of the public health council, shall be filed as a public record in the state department of health and a copy thereof shall be sent by the commissioner of health to each health officer within the state, and shall be published in such manner as the public health council may from time to time determine. The commissioner or his deputy shall furnish certified copies of such code and its amendments for a fee of one dollar and such certified copies shall be received in evidence in all courts or other judicial proceedings in the state. The provisions of the sanitary code shall have the force and effect of law and the violation of any provision thereof shall constitute a misdemeanor,† punishable on conviction by a fine not exceeding fifty dollars or by imprisonment for not exceeding six months, or both. No provision of the sanitary code shall relate to the city of New York or any portion thereof, and every provision of the sanitary code shall apply to and be effective in all portions of the state except the city of New York unless stated otherwise. (Added by L. 1913, ch. 559; amended by L. 1923, ch. 494, L. 1927, ch. 48, and L. 1941, ch. 220.)

§ 2-c. **Enforcement of sanitary code.** The provisions of the sanitary code shall, as to matters to which it relates, and in the territory prescribed therefor by the public health council, supersede all local ordinances heretofore or hereafter enacted inconsistent therewith. Each city, town or village may, in the manner hereinafter prescribed, enact sanitary regulations not inconsistent with the sanitary code established by the public health council. The public health council shall have power, subject to approval by the commissioner of health, to prescribe by regulations, incorporated in and as a part of the sanitary code, the qualifications of directors of divisions, district state health

* See Art. VIII-A, also § 18-c.

† See § 17 and footnote.

officers, local health officers hereafter appointed, public health nurses, and, applicable to new appointments made after June thirtieth, nineteen hundred thirty-seven, if appointees are to be paid from public funds, of dairy and milk inspectors, operators of public sewage treatment plants and operators of public water treatment and purification plants; provided that appointments may be made from civil service lists if established prior to July one, nineteen hundred thirty-seven of dairy and milk inspectors, operators of public sewage treatment plants and operators of public water treatment and purification plants.

The actions, proceedings and authority of the state health department in enforcing the provisions of the public health law and sanitary code applying them to specific cases shall at all times be regarded as in their nature judicial and shall be treated as *prima facie* just and legal. All meetings of said public health council shall in every suit and proceeding be taken to have been duly called and regularly held, and all regulations and proceedings to have been duly authorized unless the contrary be proved.

The public health council shall have no executive, administrative or appointive duties. It shall, at the request of the commissioner of health, consider any matter relating to the preservation and improvement of public health, and may advise the commissioner thereon; and it may from time to time submit to the commissioner any recommendations which it may deem wise. (Added by L. 1913, ch. 559; amended by L. 1923, ch. 493, L. 1927, ch. 48, L. 1937, ch. 628, and L. 1938, ch. 209.**)

§ 3. **Compensation of officers and employees.** The commissioner of health shall receive an annual salary of twelve thousand dollars, and his expenses actually and necessarily incurred in the performance of his official duties, to be paid monthly on the audit of the comptroller. The commissioner of health shall appoint such assistants as are necessary for the proper performance of the powers and duties of the department, and fix their compensation within the amount appropriated therefor by the legislature.* He shall fix, in the same manner, the compensation of the deputy commissioner. (Amended by L. 1913, ch. 559, L. 1919, ch. 541, L. 1923, ch. 485, and L. 1927, ch. 48.)

§ 3-a. **Divisions.** There shall be in the state department of health such divisions, bureaus or other units as the commissioner from time to time may determine to be necessary and the director of the budget shall approve. (Added by L. 1913, ch. 559; amended by L. 1921, ch. 510, L. 1922, ch. 402, L. 1927, ch. 48, L. 1931, ch. 481, L. 1937, ch. 395, and L. 1944, ch. 298.)

§ 4. **General powers and duties of commissioner.** The commissioner of health shall take cognizance of the interests of health and life of the people of the state, and of all matters pertaining thereto. He shall exercise general supervision over the work of all local health authorities except in the city of New York. He shall have general supervision and control of the medical treatment of patients in the New York state hospital for the treatment of incipient pulmonary tuberculosis at Ray Brook and the New York state orthopedic hospital for children at West Haverstraw. § He shall be charged with the enforcement of the public health law and the sanitary code. He shall make inquiries in respect to the causes of disease, especially epidemics, and investigate the sources of mortality, and the effect of localities, employments and other conditions, upon the public health. He shall obtain, collect and preserve such information relating to mortality, disease and health as may be useful in the discharge of his duties or may contribute to the promotion

** Section 2 of ch. 209 provided as follows: "This act shall not impair nor affect existing regulations of the public health council prescribed and approved in any manner authorized by the provisions of such section as in force prior to the taking effect hereof."

* See § 4-a and § 18-a.

§ Now New York State Reconstruction Home.

of health or the security of life in the state.** He may issue subpoenas, compel the attendance of witnesses and compel them to testify in any matter or proceeding before him, and a witness may be required to attend and give testimony in a county where he resides or has a place of business without the payment of any fees. The commissioner of health may reverse or modify an order, regulation, by-law or ordinance of a local board of health concerning a matter which in his judgment affects the public health beyond the territory over which such local board has jurisdiction. He may in his discretion from time to time create health districts comprised exclusively of lands lying within the boundaries of a state park by filing in the office of the secretary of state an order defining generally the boundaries of such district or districts.* Upon the making and filing of such an order the local board of health of such district shall consist of the park commission and ex-officio the state commissioner of health or his duly authorized representative. Such board of health shall have all the powers and duties of local boards of health and shall appoint a health officer qualified as provided by regulation of the public health council. Such health officer shall have all the powers and duties under the law of the state and the state sanitary code which local health officers now have or hereafter shall have within their respective localities. The state health commissioner may from time to time modify or repeal such order or orders. The commissioner of health and any person authorized by him so to do, may, without fee or hindrance, enter, examine and survey all grounds, erections, vehicles, structures, apartments, buildings and places. Wherever, in this chapter the commissioner of health is empowered to or charged with the responsibility to do or perform any act, he may deputize in writing any assistant commissioner, administrative officer, or any director of a division in the department to do or perform the act in his place and stead. (Amended by L. 1913, ch. 559, L. 1924, ch. 325, L. 1927, ch. 48, L. 1929, ch. 517, and L. 1936, ch. 335.)

§ 4-a. Sanitary districts; district state health officers; public health nurses. The commissioner of health shall from time to time divide the state, except cities of the first class, into twenty or more sanitary districts. He shall appoint for each of such districts a district state health officer who shall be a physician. Each district state health officer, under the direction of the commissioner of health and subject to the provisions of the sanitary code, shall, in addition to such other duties as may be imposed upon him, perform the following duties:

1. Keep himself informed as to the work of each local health officer within his sanitary district;
2. Aid each local health officer within his sanitary district in the performance of his duties, and particularly on the appearance of any contagious disease;
3. Assist each local health officer within his sanitary district in making an annual sanitary survey of the territory within his jurisdiction, and in maintaining therein a continuous sanitary supervision;
4. Call together the local health officers within his district or any portion of it from time to time for conference;†
5. Adjust questions of jurisdiction arising between local health officers within his district;
6. Study the causes of excessive mortality from any disease in any portion of his district;
7. Promote efficient registration of births and deaths;

** See § 18-b.

* 1. Palsades Interstate Park, July, 1924.

2. Allegany State Park, March, 1926.

† See § 21 and § 21-b, subd. 6.

8. Inspect from time to time all labor camps within his district and enforce the regulations of the public health council in relation thereto:*

9. Inspect from time to time all Indian reservations and enforce all provisions of the sanitary code relating thereto;**

10. Endeavor to enlist the cooperation of all the organizations of physicians within his district in the improvement of the public health therein;

11. Promote the information of the general public in all matters pertaining to the public health;

12. Act as the representative of the state commissioner of health, and under his direction, in securing the enforcement within his district of the provisions of the public health law and the sanitary code.

The commissioner of health, whenever he may deem it expedient so to do, may employ such number of public health nurses as he may deem wise within the limits of his appropriation, and may assign them from time to time to such sanitary districts and in such manner as in his judgment will best aid in the control of contagious and infectious diseases and in the promotion of public health. § (Added by L. 1913, ch. 559; amended by L. 1923, ch. 493.)

§ 4-b. Duties of commissioner with respect to laboratories.¶ The commissioner of health shall establish and maintain one or more laboratories with such expert assistants and such facilities as are necessary for routine examinations and analyses, and for original investigations and research in matters affecting public health. He shall have authority to make, at the expense of the state, such examinations and analyses at the request of any health officer or of any physician. He may enter into contracts with laboratories in localities accessible to the various portions of the state for the prompt examination of specimens received from local health officers or physicians and for the immediate report thereon, at the expense of the state; provided that all such laboratories shall conform to the standards of efficiency established by the public health council, and that no obligation shall be incurred by the commissioner in excess of the sums available therefor.

The commissioner of health may issue to laboratories certificates of approval covering such laboratory examinations as the state sanitary code may require to be made in laboratories approved for such examinations, and may prescribe the conditions under which such approvals will be granted. Notwithstanding any other conditions which he may prescribe, such an approval shall not be issued hereafter to a laboratory, not heretofore approved, unless the director, bacteriologist or pathologist in charge of such examinations shall possess such educational and technical qualifications as the public health council shall establish. (Added by L. 1913, ch. 559; amended by L. 1929, ch. 368, and by L. 1932, ch. 310.)

§ 4-c. Duties of commissioner with respect to hospitals for contagious diseases. The commissioner of health shall from time to time submit to the authorities of the several municipalities of the state such recommendations as he may deem wise as to the establishment of hospitals for contagious diseases, indicating the diseases for which in his judgment provision should be made and the extent of such provision. It shall be the duty of the commissioner to inspect from time to time all hospitals for contagious diseases maintained under the jurisdiction of any municipal authority and to report as to the condition and needs of such hospitals to the authorities of the municipality, and to include an abstract of such reports in his annual report.

* See Sanitary Code.

** See § 36.

¶ See § 21-c.

§ See §§ 5, 20-c to 20-h, 25; Sanitary Code; McKinney's Unconsolidated Laws, §§ 6791-6794; Mental Hygiene Law, § 34, subd. 11; Penal Law, § 185. Also Administrative Rules relating to submission of specimens for laboratory examination, and for district laboratory supply stations.

The public health council may from time to time establish regulations for the maintenance of hospitals for contagious diseases. (Added by L. 1913, ch. 559.)

§ 4-d. **Grants, gifts and bequests.**† Subject to the provisions of the state finance law the commissioner of health is authorized to take, and administer for the state any grant, gift or bequest to be applied, principal or income or both, for the purposes specified in such grant, to the maintenance and use of any hospital, institution or service in the department of health. (Added by L. 1935, ch. 55.)

§ 5. **Laboratory supply stations.*** The state commissioner of health or his authorized representative may establish stations, to be known as district laboratory supply stations, for the distribution of laboratory supplies furnished by the state department of health. He may designate districts to be served by such district laboratory supply stations, each such district to include one or more municipalities provided, however, that no such district shall include the whole or part of more than one county. The term "municipality" as used in this article means a city, village, town or consolidated health district. The state commissioner of health may appoint the health officer of any municipality, the director or person in charge of any public health laboratory, or other competent person, located in each such district, to serve as the custodian of the supply station thereof. The health officer or other person so appointed shall, with the approval of the state department of health, establish such substations as may be necessary for the proper distribution of laboratory supplies to all physicians practicing in the district. Each district laboratory supply station and the substations thereof shall be maintained and operated in accordance with the rules and regulations of the state department of health and shall be subject at all times to inspection by authorized representatives of the state commissioner of health. The state commissioner of health may at any time discontinue any district supply station or substation or rescind any appointment previously made under this act, when in his judgment or that of his authorized representative such action will be in the interest of the public health. The custodian of each district laboratory supply station established and operated under this act shall, upon certification of the state department of health that he has maintained and operated such station and the substations thereof in accordance with its prescribed rules and regulations, be entitled to receive annually the sum of twenty dollars in consideration of services rendered in the administration of such district laboratory supply station, together with the sum of ten dollars for each substation established and operated in accordance with the provisions of this article, and the actual and necessary expenses of operation and maintenance of the district laboratory supply station and substations thereof, such sums to be a charge upon the municipality when a single municipality is included in such district, and, in districts including more than one municipality, upon the county in which the municipalities so included are located, to be thereafter assessed by the board of supervisors against each municipality included in such district on the basis of the assessed valuations. (Added by L. 1920, ch. 620; amended by L. 1921, ch. 399, and L. 1923, ch. 637.)

§ 5-a. **Regulation and control of autopsies.** (Repealed by L. 1944, ch. 166, effective September 1, 1944.) (See Code of Criminal Procedure § 778-a.)

§ 6. **Nuisances.**** The commissioner of health shall have all necessary powers to make examinations into nuisances, or questions affecting the security of

† See State Finance Law, § 11.

* See § 4-b and footnote.

** See §§ 21, 26, 31, 32; Sanitary Code; and Penal Law, § 1530.

life and health in any locality. Whenever required by the governor of the state, he shall make such an examination and shall report the results thereof to the governor, within the time prescribed by him therefor. The report of every such examination, when approved by the governor, shall be filed in the office of the secretary of state, and the governor may declare the matters public nuisances, which may be found and certified in any such report to be nuisances, and may order them to be changed, abated or removed as he may direct. Every such order shall be presumptive evidence of the existence of such nuisance; and the governor may, by a precept under his hand and official seal, require the district attorney, sheriff and other officers of the county where such nuisance is maintained, to take all necessary measures to execute such order and cause it to be obeyed, and the acts of any such county officer in the abatement of any such nuisance, reasonable or necessary for such abatement, shall be lawful and justifiable and the order of the governor a sufficient protection to such officer. The expense of such abatement shall be paid by the municipality where the nuisance occurs, and shall be a debt recoverable by such municipality of all persons, maintaining it or assisting in its maintenance, and a lien and charge upon the lands upon which the nuisance is maintained, which may be enforced by a sale of such lands to satisfy the same.

§ 6-a. **Milk control and inspection.** The state commissioner of health may appoint such milk control specialists, assistant milk control specialists, bacteriologists, stenographers, clerks and such other employees and assistants as may be required, and may secure such equipment and appliances as may be necessary to carry out the purposes of this section, subject to the appropriations made therefor. (Added by L. 1930, ch. 763.)

§ 6-b. **Powers, functions and duties of commissioner of health.** The commissioner of health is charged with the duty of protecting and promoting the health and welfare of the people of this state by inspecting, regulating and supervising the sanitary quality of milk and cream distributed, consumed or sold within this state, whether produced within or without the state. He shall make an investigation, study and survey within and without the state, to determine, among other things, the following: (a) the present sources of supply of milk and cream for household consumption and for manufacturing purposes and the amount produced by such sources; (b) the adequacy of existing state and municipal machinery for the enforcement of sanitary regulations and the extent to which impurities have escaped detection and prevention; (c) the proper state or local agencies or combination of agencies to be entrusted with the duties and responsibilities of effective sanitary control and inspection of milk and cream in its various local and state-wide phases; (d) the probable cost to the state of adequately enforcing the rules and regulations of the commissioner and the public health council; (e) such other relative or pertinent information as the commissioner may deem necessary. (Added by L. 1930, ch. 763.)

§ 6-c. **Powers of commissioner of health relating to the importation of milk and cream; permit; penalty.** 1. On and after July first, nineteen hundred thirty-seven, no person, firm, association, partnership or corporation shall engage in or carry on the business of shipping, transporting or importing into this state from any other state, territory or foreign country any milk or cream for sale, resale or distribution to consumers without first having obtained from the commissioner of health a permit authorizing all such shipments, transportations or importations; all such permits shall expire on June thirtieth following; provided, however, that before the commissioner of health shall issue such permit he shall (1) cause an inspection by a New York state inspector of the out of state producers' cows, barns, stables, milk

houses, water supply, milk equipment, utensils and milk; (2) require a veterinarian's certificate showing the cows to be in a healthy condition; and (3) require the applicant or applicants for the permit to satisfy him that the milk or cream to be shipped, transported or imported into the state meets all of the sanitary requirements and standards for milk and cream produced within the state of New York; provided, further, that nothing in this section shall be held or construed to apply to evaporated or condensed milk manufactured, sold or exposed for sale or exchange in hermetically sealed cans.

2. The commissioner of health shall not issue a permit for the shipment, transportation or importation into this state of any milk or cream for sale, resale or distribution to consumers which fails to meet in detail in accordance with the actual inspection hereinabove described, all sanitary requirements, regulations and standards now in force or hereafter promulgated by the state department of health for the production of milk or cream within the state.

3. Any person, firm, association or corporation violating any of the provisions of this section shall be guilty of a misdemeanor. (Added by L. 1937, ch. 404.)

§ 6-d. **Emergency measures to protect milk supply.** When in the opinion of the commissioner of health a milk supply has been so contaminated as to be potentially dangerous to health or serious curtailment of such a supply is threatened as a result of accident, sabotage or enemy action, he is hereby authorized to embargo any part of any such milk supply pending investigation and, notwithstanding any contrary provisions of state law or of local ordinances or regulations, to authorize the transfer of milk from one plant to another or from one municipality to another for pasteurization and bottling and/or for sale until conditions warrant normal operation. (Added by L. 1942, ch. 500, L. 1943, ch. 13, and L. 1944, ch. 136, effective immediately and shall continue in full force and effect until July first, nineteen hundred forty-five.)

§ 7. **Overflow of water from the canals.** Whenever water escaping or discharged from any of the canals of the state, through water gates, spillways or otherwise, shall overflow adjacent lands, or any creek or stream receiving such waters, or collect in stagnant pools along the canal or any such creek or stream to such an extent as to cause disease or sickness to the inhabitants of the vicinity, any three of such inhabitants may make a written complaint thereof under oath to the commissioner of health, setting forth the extent of the injury to the public health, so far as is within their knowledge, and the length of time the disease or sickness has existed, which shall be accompanied by a verified certificate of a practicing physician of the vicinity, stating the facts known to him, pertaining to the allegations of the complaint. Upon receipt of such complaint, the commissioner of health shall forthwith examine into the facts and circumstances therein set forth, and may call on the state superintendent of public works to make such surveys as they may require for their information, who shall make the same without delay, and if such commissioner is satisfied that such disease or sickness exists, and is caused by waters of the canal escaping or discharged therefrom, he shall so report to the superintendent of public works, without unnecessary delay, who shall forthwith abate the cause of such disease or sickness. (Amended by L. 1927, ch. 48.)

§ 8. **Employment of local boards and experts.** Whenever requested by the commissioner of health, any city board of health in this state may appoint one of its members to act with and assist the commissioner during the examination of any nuisance, or for the purpose of determining whether a public nuisance exists. Such representative may take part in such examination, and sit with the commissioner during the conduct thereof, but the

final determination of the questions involved shall rest solely with the commissioner. The commissioner may from time to time employ competent persons to render sanitary service, and make or supervise practical and scientific investigations and examinations requiring expert skill, and prepare plans and reports relative thereto.

§ 9. **Examination and inspection of public works.** All persons having the control, charge or custody of any public structure, work or ground, or of any plan, description, outline, drawing or chart thereof or relating thereto, made, kept or controlled by or under any public authority, shall permit and facilitate the examination, inspection and copying thereof by the commissioner of health, or by any person authorized by him to make such examination or inspection of such copies.

§ 10. **Acquisition of land.** 1. If the commissioner of health shall certify to the commissioners of the land office that by reason of sudden emergency the acquisition of any land is immediately necessary for quarantine or other purpose to prevent great danger to the public health, and such commissioners are satisfied that such action is necessary, such commissioners may acquire by purchase or by condemnation, in the name of the people of the state of New York, such land as in their judgment is necessary and suitable for such purposes.

2. The commissioner of health shall, with the approval of the governor, whenever money shall have been appropriated therefor, have power and authority to appropriate real property in the manner and under the conditions provided in this section.

3. The superintendent of public works, upon the request of the commissioner, shall cause a survey and map, of the lands to be appropriated, to be made. The commissioner and the state superintendent of public works, and their duly authorized agents and employees, may enter upon such lands and the structures thereon for the purpose of making such survey and map. The state superintendent of public works shall annex to such map his certificate of the accuracy thereof. The original of such map and the certificate annexed thereto shall be filed in the office of the department of public works. A copy of such map and certificate, certified by the state superintendent of public works, shall be filed by him in the office of the county clerk of the county in which such lands are situated.

4. The attorney-general, upon the request of the commissioner, shall hereupon cause a copy of said map and certificate, with notice of the filing thereof, to be served upon the owners of the lands included in such survey and map and upon all persons and corporations having any estate or interest therein. If the attorney-general is not able to serve or cause to be served such notice upon all of the owners of such property or all of the persons or corporations having an estate or interest therein, after making reasonable effort to do so, or if he is unable to ascertain the persons or corporations owning or having an estate or interest in any of such lands and the structures thereon, or is unable to discover the character of the estate or interest in or to any of such lands of any person or corporation, he shall cause such map, certificate and notice to be published once in one or more newspapers published in the county in which such lands are situated.

5. From the time of the service or publication of the map, certificate and notice as above prescribed, the entry upon and appropriation by the state of the property described in such map shall be deemed complete, and thereupon such property shall become and be the property of the people of the state. The notice so served or published shall be conclusive evidence of such entry and appropriation and of the quantity and boundaries of the property appropriated for such purposes. The attorney-general shall cause a copy of such map, certificate and notice, with an affidavit of the due service thereof

on the persons and corporations owning such property or having any estate or interest therein, or of the due publication thereof, to be recorded in the books used for recording deeds in the office of the county clerk of the county in which such lands are situated, and the record of such notice and proof of service or publication thereof shall be conclusive evidence of the due acquisition of the title in the name of the state of the lands described in such map.

6. The commissioner of health shall cause an appraisal to be made by not less than three disinterested persons to be employed by it, of the value of the lands and structures thereon appropriated by the state as hereinbefore provided and of the estates and interests therein of all persons or corporations. Such commissioner shall negotiate with the owners of such property for the purchase thereof, but in no case shall an amount greater than the appraised value of such property be agreed upon. The commissioner and the persons or corporations whose property has been appropriated and who have agreed upon a compensation to be paid therefor shall enter into an agreement or agreements for the payment of the compensation to be paid, which agreement shall provide for confirmatory conveyances or releases by such owners to the state and shall be executed by the commissioner and the said owners. Such agreement or agreements shall be filed in the office of the state comptroller. If the board is unable to agree as to the compensation to be paid for any of such lands and the structures thereon, the court of claims shall have jurisdiction to determine the amount of such compensation, and upon proceedings being brought before such court as provided by law, an award shall be made of compensation for the lands and structures thereon so appropriated.

7. The persons or corporations whose property has been taken under the provisions of this section and who have agreed upon the compensation to be paid therefor or to whom an award or compensation has been made by the court of claims shall be entitled to interest from the time of the acquisition of title by the state to the date of the payment of the said compensation; but such interest shall cease upon the service by the state comptroller upon the person or corporation entitled thereto of a notice that the state is ready and willing to pay the amount of such compensation upon the presentation of proper proof and vouchers.

8. The attorney-general shall furnish to the commissioner all searches necessary to prove the title to the lands taken as provided in this section. The expense of such searches, and of making any examination of title, shall be paid from the state treasury out of the funds appropriated for that purpose, on the audit and warrant of the state comptroller. (Amended by L. 1931, ch. 481.)

§ 11. **Power of commissioner where board of health fails to appoint a qualified health officer.*** If any local board of health shall fail to appoint a health officer qualified as provided by regulation of the public health council, the commissioner of health may, in such municipality, exercise the powers of a health officer thereof or designate a health officer qualified as provided by regulation of the public health council to exercise such powers. The expenses lawfully incurred by him in such municipality shall be a charge upon and paid by such municipality until such time as a local health officer shall be appointed therein, whereupon the jurisdiction conferred by this section on the state commissioner of health or other person designated by him shall cease. (Amended by L. 1913, ch. 559, and L. 1929, ch. 376.)

§ 12. **Annual report.** The commissioner of health shall annually, on or before the first day of March, make a written report to the governor upon the vital statistics and sanitary conditions and prospects of the state. Such report shall set forth the action of the department and of its officers and agents

* See § 20.

and the names thereof during the past year, a detailed statement of all moneys paid out by or on account of the department, and the manner of its expenditures during the year, and other useful information, and shall suggest any further legislative action or precaution deemed necessary for the better protection of life and health. (Amended by L. 1930, ch. 415.)

§ 13. **Tenement houses in cities.** The commissioner shall have power to examine into the enforcement of the laws relating to tenement houses in any city. Whenever required by the governor, he shall make such an examination and shall report the results thereof to the governor within the time prescribed by him therefor. (Amended by L. 1913, ch. 559.)

§ 14. **Inspection of state institutions.** The state commissioner of health shall cause to be made from time to time examinations and inspections of the sanitary conditions of each state institution and transmit copies of the reports and recommendations thereon to the head of the department having jurisdiction over the institution examined. It shall be the duty of the proper officer of each such institution to immediately report an outbreak of a contagious or infectious disease to the state commissioner of health,[†] and upon receipt of such report the commissioner shall advise such officer as to the best means to effectually control said disease. (Amended by L. 1910, ch. 92, L. 1913, ch. 559, L. 1921, ch. 510, L. 1927, ch. 48, and L. 1944, ch. 137.)

§ 15. **State board of health to mean department of health.** Whenever the term "state board of health" occurs or any reference is made thereto, in any law, it shall be deemed to mean or refer to the department of health as described in this article. The commissioner of health shall have all the powers conferred and perform all the duties imposed by law upon the state board of health, or any member, committee or officer thereof, including the secretary.

§ 16. **Pending actions and proceedings not affected.** (Repealed by L. 1941, ch. 42.)

§ 17. **Violations of health laws or regulations.*** Any person violating, disobeying or disregarding the terms of any lawful notice, order or regulation prescribed by the state commissioner of health or by the sanitary code, or any provision of the public health law or sanitary code, for which a civil penalty is not otherwise expressly prescribed by law, shall be liable to the people of the state for a civil penalty of not to exceed fifty dollars for every such violation. The said penalty may be recovered by an action brought by the state commissioner of health in any court of competent jurisdiction. Such civil penalty may be released or compromised by the commissioner of health before the matter has been referred to the attorney-general and where such matter has been referred to him, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the attorney-general with the consent of the commissioner of health. Nothing in this section contained shall be construed to alter or repeal any existing provision of law declaring such violations or any of them misdemeanors or felonies or prescribing the penalty therefor. (Added by L. 1915, ch. 384; amended by L. 1916, ch. 372, and L. 1942, ch. 66.)

[†] See § 25, and Sanitary Code.

* See § 2-b; Sanitary Code; and Penal Law, §§ 1740, 1741.

ARTICLE II-A

Maternity, infancy and child hygiene

(Added by L. 1922, ch. 402)

Section 18. General purposes.

18-a. Assistants and employees. (Repealed.)

18-b. General powers and duties of the department.

18-c. Specific purposes.

18-d. Serological blood test for syphilis of pregnant women.

§ 18. General purposes. The objects and purposes of this article shall be the safeguarding of motherhood, the saving of infant life and the prevention of the diseases and defects of childhood. (Amended by L. 1944, ch. 298.)

§ 18-a. Assistants and employees. (Repealed by L. 1944, ch. 298.)

§ 18-b. General powers and duties of the department. The commissioner of health shall act in an advisory and supervisory capacity, in matters pertaining to the objects and purposes of this article and shall cooperate with and stimulate local agencies, public and private, in promoting such measures and undertakings as may be designed to accomplish the purposes of this article. The commissioner shall cooperate with other state departments having jurisdiction over matters affecting the welfare of mothers and children, to the end that existing activities may be co-ordinated and duplication of effort avoided.† (Amended by L. 1944, ch. 298.)

§ 18-c. Specific purposes. Among other powers and duties to be exercised by the commissioner of health shall be the following:

1. Making surveys and studies of local conditions influencing the health of mothers and children.

2. Advising localities as to providing adequate care of mothers and infants and children to whom such care is not otherwise available.

3. Holding health consultations for mothers and children in the rural districts in co-operation with local health officers and other physicians.

4. Instructing local public health nurses in the hygiene of maternity and infancy.

5. Making available to mothers through instruction by physicians, nurses and publications, information concerning the hygiene of maternity and infancy.

6. Supervision and training of midwives.*

7. Prevention of blindness in infancy.

8. The care and rehabilitation of crippled children not otherwise provided for.

9. Public instruction by means of moving pictures, and lectures and other methods regarding preventable conditions affecting infant and maternity deaths. (Amended by L. 1944, ch. 298.)

§ 18-d. Serological blood test for syphilis of pregnant women. Every physician attending pregnant women in the state during gestation shall in the case of every woman so attended take or cause to be taken a sample of blood of such woman at the time of first examination, and submit such sample to an approved laboratory for a standard serological test for syphilis. Every other person permitted by law to attend upon pregnant women in the state but not permitted by law to take blood tests, shall cause a sample of the

† See § 4, and Education Law regarding physically handicapped children; General Municipal Law regarding child welfare boards and prenatal and maternity care; Social Welfare Law; Penal Law, Art. 44; and Sanitary Code.

* See Art. VIII-A, and Administrative Rules.

blood of such pregnant woman to be taken by a duly licensed physician and submitted to an approved laboratory for a standard serological test for syphilis. The term "approved laboratory" means a laboratory approved for this purpose by the state department of health, or in the city of New York by the department of health of such city. A standard serological test for syphilis is one recognized as such by the state department of health or in the city of New York by the New York city department of health. (Added by L. 1938, ch. 133.)

ARTICLE II-B

State aid to counties†

(Added by L. 1923, ch. 662)

Section 19. State aid to counties engaging in public health work.

19-a. Approval of state commissioner of health.

19-b. Certificate by clerk of board of supervisors; approval; inclusion in executive budget; amount of state aid; payment.

19½. Suppression and control of poliomyelitis; payment of cost.

§ 19. State aid to counties engaging in public health work. Whenever the board of supervisors of any county shall appropriate and expend moneys for the construction, establishment or maintenance by such county of a county, community, or other public hospital, clinic, dispensary or similar institution, or for the purpose of defraying the expenses of such county in any public enterprise or activity for the improvement of the public health, or any public health work undertaken by such county, within limits to be prescribed by the state commissioner of health, such county shall receive state aid in the manner and subject to the conditions prescribed in this article. The legislature from time to time shall make appropriations for the purpose of rendering such state aid. The state commissioner of health is hereby empowered to prescribe limitations upon the aid to be granted, under applications now pending or hereafter made. (Amended by L. 1924, ch. 278, L. 1927, ch. 195, and L. 1930, ch. 722.)

§ 19-a. Approval of state commissioner of health. It shall be the duty of the state commissioner of health to formulate standards of construction, equipment, service, administration and work which must be complied with by such counties in order to be entitled to state aid, and no state aid shall be given to any county unless the state commissioner of health, after inspection and examination by him or his representative, shall make his certificate that such construction, equipment, service, administration or work is necessary to the public health and conforms to the standards so established therefor, and to the limits prescribed by him as required by section nineteen of this article. (Amended by L. 1924, ch. 278.)

§ 19-b. Certificate by clerk of board of supervisors; approval; inclusion in executive budget; amount of state aid; payment. The clerk of the board of supervisors of each such county shall, on or before the first day of December of each year, transmit to the state commissioner of health a certificate in duplicate, on forms and in such detail as he shall require, which shall constitute a budget of proposed expenditures which has been adopted by the board of supervisors of such county for a purpose specified in section nineteen of this article, the county fiscal year covered by such budget, the specific purposes for which such sums have been budgeted for expenditures, and stating that the board of supervisors desires to and hereby does make application for state aid, for reimbursement of fifty per centum of the money expended or to be expended by the county.

† See § 20-h.

The state commissioner of health shall revise each such certificate to meet with his approval in accordance with the provisions of section nineteen-a of this article.

On or before January first of each year the state commissioner of health shall file with the governor a statement of the aggregate amount of approved applications for state aid. Such sums as revised in the discretion of the governor, shall be the estimate of state aid under this article to be used in the preparation of the executive budget.

Subsequent to enactment of the appropriation by the legislature the state commissioner of health shall revise each such certificate, budget and application for state aid as necessary to bring the aggregate of all budgets within the total appropriations available.

Supplemental certificates, budgets and applications for state aid may be transmitted by the clerk of the board of supervisors to the state commissioner of health, in the same form as required above, covering temporary or emergency activities or services to be undertaken by the county during the same fiscal period. Such supplemental certificates, budgets and applications for state aid may be approved by the state commissioner of health within the appropriations available.

The state commissioner of health shall file one copy of each such revised certificate, budget and application for state aid in his office, one copy with the clerk of the board of supervisors of each such county and one copy with the state comptroller together with a certificate stating what part, if any, of the amount stated in such budgets, is necessary to the public health and conforms to the standards and limits established by him and indicating his approval of such amounts for reimbursement of fifty per centum of the total amount expended or to be expended.

On application by the proper county official the state commissioner of health may approve interchanges between items in the approved county budgets on file with the state comptroller.

Periodically, as required by the state commissioner of health, the fiscal officer of each county shall file with the state commissioner of health on such forms and in such detail as he and the state comptroller shall require, a statement of expenditures made by the county for the purposes specified in the application for state aid as approved by the state commissioner of health. Such statements shall be filed by the state commissioner of health with the state comptroller in the manner prescribed or to be prescribed by the state comptroller, together with certification stating what part, if any, of the amounts expended for purposes specified in the approved application for state aid was necessary to the public health and was conformable to the standards and limits established by the state commissioner of health as provided in section nineteen-a of this article.

The state comptroller, after audit, shall draw a warrant or warrants upon the commissioner of taxation and finance for the amounts to which each such county is entitled and the commissioner of taxation and finance shall pay the amounts set forth in such warrant or warrants to the county treasurers of the counties entitled thereto.

Reimbursement of the state's share of expenditures made by counties prior to the date this act shall take effect shall be made in accordance with the provisions of section nineteen-b of this article prior to this amendment. (Amended by L. 1924, ch. 278, L. 1926, ch. 367, and L. 1940, ch. 732.)

§ 19½. **Suppression and control of poliomyelitis; payment of cost.** 1. In addition to the powers and duties prescribed by section twenty-five of this chapter, every local board of health and every health officer shall exercise proper and vigilant medical inspection of all persons, twenty-one years of age or over, infected or who have been infected with poliomyelitis, and shall, after approval by the state commissioner of health, provide at the remedial

stages of the disease suitable surgical, medical or therapeutic treatment or hospital care, and necessary appliances and devices for such persons so infected or exposed who can not otherwise be provided for.

2. One-half of the cost of providing such surgical, medical or therapeutic treatment or hospital care and necessary appliances and devices for such person infected with poliomyelitis is hereby made a charge against the county, or the city of New York, as the case may be, in which such person resides, and the remaining one-half of the cost thereof shall be paid by the state out of moneys appropriated therefor. All claims for services rendered and for supplies furnished and for other expenses incurred in providing such treatment, care and necessary appliances and devices shall be paid in the first instance by the board of supervisors of the county in which such person resides, or if such person resides in the city of New York, by the board of estimate, upon vouchers presented and audited in the same manner as in the case of other claims against the county.

3. Such state aid shall be approved by the commissioner of health for such cases as have been examined and certified for treatment by the department of health.

4. Claims for reimbursement from state funds under this section shall be presented by the respective counties, or the city of New York, to the state department of health quarterly, according to the provisions of section nineteen-b of this chapter. The approval of such claims shall be made by the state department of health to the extent authorized by this section. The state department of health shall certify to the comptroller the amounts so approved by it, specifying the amount to which each county, or the city of New York, is entitled. The amounts so certified shall be paid from the state treasury upon the audit and warrant of the comptroller to the treasurer of such counties, or the comptroller of the city of New York, entitled thereto, from moneys, available therefor by appropriation. For the purposes of the annual departmental estimates for the executive budget the probable amount needed for expenditure from state funds under this article shall be regarded as financial needs of the state department of health.

5. Notwithstanding the provisions of section thirty-eight of this chapter or any other general, special or local law, the terms "local board of health" and "health officers" as used in this section shall include the department of hospitals of the city of New York and the provisions of this section shall apply with equal effect to the city of New York.

The department of health and all health officers of the city of New York shall promptly report to the department of hospitals all cases of poliomyelitis of persons twenty-one years of age and over of which it shall have notice. (Added by L. 1942, ch. 819.)

ARTICLE II-C

Federal aid for maternal and child health service, care and treatment of crippled children and of other public health work

Section 19-c. Department of health designated as state agency for administering certain federal-aid moneys.

19-d. Powers of the state commissioner of health.

19-e. Custody and payment of funds.

19-f. Allotments to municipalities and local health districts.

§ 19-c. Department of health designated as state agency for administering certain federal-aid moneys. 1. The state department of health is hereby designated as the agency of the state to administer those parts of the federal social security act which relate to maternal and child health services, the care and treatment of crippled children and other public health work and

to co-operate with the duly constituted federal authorities charged with the administration thereof.

2. The commissioner of health is authorized and empowered to take such steps, not inconsistent with law, as may be necessary for the purpose of procuring for the people of this state all of the benefits and assistance, financial and otherwise, provided, or to be provided for, by or pursuant to any act of congress relating to maternal and child health services, care and treatment of crippled children and other public health work. (Added by L. 1937, ch. 15.)

§ 19-d. **Powers of the state commissioner of health.** The state commissioner of health is authorized and empowered:

1. To receive and disburse pursuant to this article the federal-aid moneys allotted to the state by or pursuant to the federal social security act or any other act of the congress making appropriations for allocation among the states for maternal and child health services, care and treatment of crippled children and other state and local public health work;

2. On behalf of the state, to adopt, execute and administer plans and to put into effect such measures as may be necessary for maternal and child health service, for the care and treatment of crippled children, and for other public health work in the state;

3. On behalf of the state, to make and execute such contracts, agreements, covenants or conditions, not inconsistent with law, as may be necessary or required by any duly constituted agency of the federal government as a condition precedent to receiving or in connection with such benefits and assistance;

4. To co-operate with all state or local authorities and agencies authorized under such acts of the congress to carry out the purposes thereof;

5. To adopt and from time to time to amend such rules and regulations and to prescribe such conditions, not inconsistent with law, as may be necessary to make available to the people of the state the relief and assistance afforded by such act of the congress;

6. To enforce all of the provisions of this article and rules adopted pursuant hereto. (Added by L. 1937, ch. 15.)

§ 19-e. **Custody and payment of funds.** The department of taxation and finance is designated as custodian of all federal-aid funds allotted to the state for the purposes of this article by the United States. Such funds shall be payable only on the audit and warrant of the comptroller on the certificate of the commissioner of health as provided in section twelve-a of the state finance law. Subject to the rules and regulations of the commissioner of health, such funds may be allocated to any municipal corporation, including New York city, and to any local health district for the use of such municipal corporation or local health district in carrying out the purposes of such act of the congress. (Added by L. 1937, ch. 15.)

§ 19-f. **Allotments to municipalities and local health districts.** Notwithstanding the provisions of any general, special or local law, the governing body of any municipal corporation or of any local health district by a majority vote may authorize the proper officials of such municipal corporation or local health district to accept grants or allotments made to such municipal corporation or local health district by the state commissioner of health for the purpose of extending or improving within such municipal corporation or local health district the maternal and child health services, the care and treatment of crippled children, and other public health work. The state commissioner of health is authorized and empowered to prescribe the terms and conditions, not inconsistent with law, which must be fulfilled, and the standards of service which must be met by the authorities of any municipal corporation or local health district in order to receive such allotment of federal-aid moneys. (Added by L. 1937, ch. 15.)

ARTICLE III

Local boards of health

Section 20. Local boards of health.

- 20-a. Expenses of consolidated health district.
- 20-b. County health districts.
- 20-c. Laboratories.
- 20-d. Powers of boards of supervisors in relation to laboratories.
- 20-e. Powers of boards of managers of laboratories.
- 20-f. Powers of the director of a laboratory.
- 20-g. Laboratories in cities.
- 20-h. State aid.
- 21. General powers and duties of local boards of health.
- 21-a. Powers and duties as to sewers.
- 21-b. General powers and duties of health officers.
- 21-c. Public health nurses.
- 22. City health officers.
- 23. Burial and burial permits. (Repealed.)
- 24. Regulating interments in cemeteries.
- 24-a. Persons, firms, and corporations procuring blood donors to be licensed.
- 25. Infectious and contagious or communicable diseases.
- 25-a. Prevention of the spread of rabies.
- 25-b. Reporting of cancer and other malignant tumors.
- 26. Nuisances.
- 27. Owner to bear all or part of expense of removal of waters wherein mosquito larvæ breed.
- 28. Assessing cost on property benefited.
- 29. Municipality may bear part of expense.
- 30. Assessing expense upon property benefited.
- 31. Removal of nuisances.
- 32. Expenses of abatement of nuisances a lien upon the premises.
- 33. Manufacturers in tenement houses and dwellings.
- 34. Jurisdiction of town boards.
- 35. Expenses, how paid.
- 36. Relief of indigent Indians in case of epidemic.
- 36-a. Providing for the care and maintenance of carriers of disease.
- 37. Mandamus.
- 38. Exceptions and limitations as to city of New York.
- 38-a. Noxious weeds and growths; declaration of nuisance; determination of period of danger to public health; notice to remove, destroy and abate weeds and growths.
- 39. Certain kinds of business and manufacture prohibited in cities or within three miles therefrom; exceptions.
- 40. Health and welfare services to all children.

§ 20. Local boards of health. 1. There shall continue to be local boards of health and health officers in the several cities, villages and towns of the state except as hereinafter provided. In cities under fifty thousand population according to the latest federal or state census or enumeration as from time to time made, the board shall consist of the mayor of the city who shall be its president, and six other persons, one of whom shall be a competent physician, who shall be appointed by the common council, upon the nomination of the mayor, and shall hold office for three years. Appointments of members of such boards shall be made for such shorter terms as at any time may be necessary, in order that the terms of two appointed members shall expire annually. In the cities, except cities whose charters otherwise provide, the board shall appoint, for a term of four years, a competent physician, not one of its members, who shall be a citizen and qualified as provided by regulation

of the public health council, to be the health officer of the city, and shall fill any vacancy that now exists or may hereafter exist from expiration of term or otherwise in the office of health officer of the city. In villages the board of health shall consist of the board of trustees of such village. In towns the board of health shall consist of the town board. The local board of health shall appoint a competent physician qualified as provided by regulation of the public health council, not a member of the local board of health, to be the health officer of the municipality, except as hereinafter provided for joint appointment by two or more local boards of health of one health officer for the municipalities joining in such appointment. Notwithstanding the provisions of any general or local law or charter, a physician who is qualified as provided by regulation of the public health council at the time of his appointment shall be eligible for appointment as health officer. The term of office of the health officer shall be four years and he shall hold office until the appointment of his successor. He may be removed for just cause by the local board of health or the state commissioner of health after a hearing; such removal by the local board of health must be approved by the state commissioner of health. The health officer need not reside within the village or town for which he shall be chosen. Notice of the membership and organization of every local board of health shall be forthwith given by such board to the state department of health. The term "municipality," when used in this article, means the city, village, town or consolidated health district for which any such local board may be or is appointed. The provisions herein contained as to the boards of health, and for the appointment of health officers, shall apply to all towns and villages, whether such villages are organized under general or special laws. The members of town boards and of village boards of trustees shall not receive additional compensation by reason of serving as members of boards of health, except that in the case of consolidated health districts members of the boards of health of such districts, whether or not members of a town board or a village board of trustees, shall be allowed a per diem compensation of not more than ten dollars for each calendar day's actual attendance at a meeting of the board of health of the district, to be fixed and determined by the board of health of the district, and which compensation in the case of any member shall not exceed the sum of one hundred and fifty dollars in any one year. Members of boards of health of consolidated districts shall also be allowed their actual and necessary expenses. Such compensation and expenses of members of boards of health of consolidated health districts shall be audited and paid in the same manner as the other expenses of the consolidated health districts. Any matter within the jurisdiction of a town or village board of health may be considered and acted upon at any meeting of such town board or village board of trustees.

2. A single health officer for a town and village, or for two or more towns or villages, jointly, may be appointed by the local boards of health thereof, upon the authorization of a resolution or ordinance duly adopted by each of the governing boards of the towns or villages affected, with the approval of the state commissioner of health. Such resolution or ordinance shall state the proportion of compensation and expenses of the health officer for which each such town or village is responsible. The power of a local board of health to remove the health officer shall in such case be exercised jointly by the local boards participating in the appointment. A health officer so appointed for one or more towns or villages shall have and exercise in each such town or village all the rights, powers, duties and obligations conferred and imposed by law upon a health officer therein, in the same manner as though appointed separately, rather than jointly, by such local boards of health, for each such town or village.

3. The state commissioner of health, on the request of the town board of any town and the board of trustees of any village and the common council

or other like authority of any city, may combine into one health district, hereinafter referred to as a consolidated health district, any two or more of such towns, villages or cities and may on the request of the town board of any town, board of trustees of any village or common council or other like authority of any city at any time thereafter set apart such town, village or city as a separate health district. In any consolidated health district there shall be a board of health which shall consist of the supervisor of each town, the president of the board of trustees of each village, and the mayor and the supervisors of each city included in each district, provided that if the number of members so provided for is an even number less than seven, such members shall within thirty days after such district shall have been established by the state commissioner of health choose an additional member of such board of health to be known as the elective member, and if the number of members so provided for is more than seven such members shall meet and elect a board of health of three members for such consolidated health district: and provided further that a member of the board, sitting ex officio and not as one of a new board of three elected as last above provided, who is the lawful incumbent of more than one of the offices entitling him to membership shall have as many votes in the board as there are municipalities of the district, in which he holds such offices, and in such a case the total number of votes on the board shall be regarded as the number of members, in applying the provisions hereof relative to the choosing of an additional member or reducing the membership to a board of three. Of the board of health first so elected one member shall be elected to serve until one year from the first day of January following his election, one to serve two years, and one to serve three years from such first day of January, and until his successor has been elected and has qualified. Prior to December first each year such village presidents, mayors and supervisors shall meet and elect one member of the board of health who shall serve three years from the January first following and until his successor has been elected and has qualified. An elective member shall serve for a term of two years from the first day of January preceding his election and until his successor shall have been appointed, provided that if at any time the number of members of the board of health, excluding the elective member, shall become an odd number, the term of office of the elective member shall thereupon cease.

The board of health of a consolidated health district shall from time to time elect a president from among its members. The health officer of a consolidated health district shall serve as the secretary of the board of health thereof without additional remuneration therefor.

In each such consolidated health district the board of health shall appoint a health officer qualified as provided by regulation of the public health council. Each board of health and each health officer of a consolidated health district shall have all the rights, powers, duties and obligations conferred and imposed by law upon boards of health and health officers respectively.

The board of health of a consolidated health district may employ and fix the compensation of an attorney, which shall be audited and paid in the same manner as the other expenses of the district.

When any consolidated health district is established, as herein provided, the boards of health of the towns, villages or cities included within such district, shall thereupon cease to exist as boards of health, and all their rights, powers, duties and obligations shall thereupon be transferred to the board of health of such district. When the board of health of any such consolidated health district shall have appointed a health officer therefor, the terms of office of the health officers of the towns, villages or cities included in such district shall cease, and all their rights, powers, duties and obligations shall thereupon be transferred to and imposed upon the health officer appointed for such consolidated health district.

The board of health of any such consolidated health district shall from time to time audit all accounts, and allow or reject all charges, claims and demands against such health district for the remuneration and expenses of the health officer, registrar or registrars, and for all other expenses lawfully incurred by said board of health or on its authority. Unless such board of health of such consolidated health district adopts the estimate system of payments as provided by this section they shall, prior to the annual meeting of the board of supervisors each year, make an abstract, to be known as the consolidated health district abstract, of the names of all persons who have presented to them accounts to be audited, the amounts claimed by each such person and the amounts finally audited and approved by them respectively, and, if such district be wholly in one county, shall deliver such abstract to the clerk of the board of supervisors. If such consolidated health district be located in more than one county the board of health of such district shall divide the total amount of the consolidated health district abstract as audited and approved in proportion to the assessed valuation of the real and personal property of the towns, villages or cities of such consolidated health district located in each county, as determined by the last preceding assessment-rolls of the towns or cities wholly or partly included in such district, and shall deliver a certified copy of such abstract to the board of supervisors of each such county, with a statement of the amount due from the real and personal property of each town, village or city of the consolidated health district in each such county on account of the expenses of such board. The board of supervisors of each such county shall levy a tax upon the real and personal property within such health district sufficient to provide for the sums audited and approved by the board of health thereof and chargeable to the real and personal property of each town, village or city of the consolidated health district in each such county. Such sums, when collected and paid to the county treasurer of each such county, respectively, shall be paid by him to the president of such board of health and shall be disbursed by him in accordance with the abstract of claims audited and approved by such board of health, as hereinabove provided.

The board of health of any consolidated health district may annually make an estimate of the expenses of such board for the ensuing calendar year and, if such district be wholly in one county, shall deliver a certified copy of such estimate to the clerk of the board of supervisors of such county prior to the annual meeting of the board preceding such year. If such consolidated health district be located in more than one county, the board of health of such district shall proportion the total amount of such estimate in the same manner as provided by this section for proportioning the expenses of such a district when audited and approved by the board, and shall deliver to the clerk of the board of supervisors of each such county a certified statement of the total estimate and the amount due from the real and personal property of each town, village or city of the consolidated health district in each such county on account thereof. The board of supervisors of each such county shall levy a tax upon the real and personal property within such health district sufficient to provide for the portion of the amount of such estimate chargeable to the real and personal property of each town, village or city of the consolidated health district in each such county. Such sums, when collected and paid to the county treasurer of each county respectively, shall be paid by him to the president of such board of health and shall be disbursed by the board of health in accordance with the estimates. After such estimate system has been adopted by a consolidated health district, the board of health thereof shall deduct from the estimate for the succeeding calendar year the amount, if any, remaining in the hands of such board after all of the liabilities incurred on account of the preceding estimate have been paid, before the certified statement of the

total estimate and the amount due from the real and personal property of each town, village or city of the consolidated health district in each such county is certified to the respective clerks of the boards of supervisors for collection. (Amended by L. 1909, ch. 165, L. 1913, ch. 559, L. 1915, chs. 124 and 555, L. 1916, ch. 369, L. 1918, ch. 275, L. 1919, ch. 423, L. 1920, ch. 621, L. 1921, ch. 270, L. 1929, ch. 376, L. 1937, ch. 191, L. 1938, ch. 660, L. 1942, ch. 459, and L. 1944, ch. 729.)

§ 20-a. **Expenses of consolidated health district.** A consolidated health district may adopt the estimate system as provided by section twenty of this chapter, and, as provided by such section, may make and file with the clerk of the board of supervisors of the county, or if such district be located in more than one county, with the clerk of the board of supervisors of each such county, an estimate for the remainder of the current year and for the ensuing calendar year. (Added by L. 1917, ch. 182; amended by L. 1943, ch. 710, effective April 2, 1945.)

§ 20-b. **County health districts.*** 1. **Definitions.** Whenever used in the public health law the term "county health district" shall mean a county health district heretofore or hereafter established pursuant to the provisions of this section; the term "county department of health" shall mean that division of the county government having jurisdiction over the public health of the county health district; the term "county board of health" shall mean the board of health of such county health district; the term "county health commissioner" shall mean the executive officer of such county department of health.

2. The board of supervisors of any county, with the approval of the state commissioner of health, shall have power to establish such county or a part thereof as a county health district and in such event shall appoint a county board of health for such county health district. No city or any part thereof shall be included as a part of any such county health district unless the mayor and common council of such city or the officials exercising similar powers shall have consented thereto.

Whenever the provisions of this section shall have been proposed to be adopted in any county, and proceedings have been taken to establish a county health district within any such county, the board of supervisors shall notify the state commissioner of health in writing of the proposed establishment of such county health district, and in such notice shall state the extent of the territory intended to be included within such district. The consent of the state commissioner of health to the establishment of any such county health district shall be evidenced by a certificate, setting forth the approval of the state commissioner of health to the establishment of such county health district and such certificate shall be filed with the clerk of the board of supervisors.

3. The county board of health shall consist of seven members, except that each city which becomes a part of the county health district shall be entitled to one additional representative on the county board of health to be appointed by the board of supervisors from a list of three persons submitted by the mayor or other administrative head of such city and which city representative so appointed shall have all the powers and duties conferred upon other members of said board and whose term of office shall be six years. The members of the county board of health shall be residents of the county health district, one of whom shall be a member of the board of supervisors selected by the board of supervisors, and at least three of whom shall be physicians licensed to practice in the state of New York. The county medical society of the county in which a county health district is established may submit to

* See § 389; Sanitary Code; McKinney's Unconsolidated Laws, §§ 5651-5657; and Conservation Law. Cattaraugus, Columbia, Cortland, Nassau, Suffolk, and Westchester are county health districts.

the board of supervisors a list of physicians from which the board of supervisors may choose the medical members of the county board of health. The term of office of each appointive member of said county board of health shall be six years, and the term of one of the members shall expire annually. The first appointments shall be made for the respective terms of six, five, four, three, two and one years. Vacancies shall be filled by appointment for the unexpired terms.

4. The members of the county board of health shall receive for attendance at meetings of the board a per diem compensation which shall be fixed by the board of supervisors and in addition thereto they shall be allowed actual and necessary traveling expenses, to be audited and paid in the same manner as other expenses of such board of health.

5. In counties having a county auditor or county comptroller, all charges and other expenses of such district shall be audited and paid in the same manner as other charges against the county. In counties not having a county auditor or county comptroller, all accounts, charges, claims and demands of such county health district shall be presented to and audited by the county board of health and paid by the county treasurer upon warrants of the county board of health within the limits of the appropriation made therefor.

6. Upon the establishment of a county board of health as herein provided it shall exercise all the powers and perform all duties of local boards of health, and such county board of health may formulate, promulgate, adopt and publish rules, regulations, orders and directions for the security of life and health in the county health district which shall not be inconsistent with the state sanitary code. Every rule, regulation, order and direction adopted by a county board of health shall state the date on which it takes effect and a copy thereof signed by the county commissioner of health or his deputy shall be filed as a public record in the state department of health, the county department of health and in the office of the county clerk and shall be published in such manner as the county board of health may from time to time determine. Such rules, regulations, orders and directions shall be known as the sanitary code of such county health district. The county commissioner of health or his deputy shall furnish certified copies of such code and its amendments for a fee of one dollar and such certified copies shall be received in evidence in all courts or other judicial proceedings in the state. The provisions of such sanitary code shall have the force and effect of law. Any violation of or non-conformance with any provision of such sanitary code or of any rule, regulation, order or special direction duly made thereunder shall constitute a misdemeanor punishable by a fine of not more than fifty dollars or by imprisonment for not more than six months or by both such fine and imprisonment.

7. Such county board of health shall elect annually one of its number as president and another as vice-president. It shall also appoint a county health commissioner, who, in addition to his duties as health commissioner may be designated by the county board of health to act as secretary without extra compensation. Such county health commissioner shall possess such qualifications for office as shall have been approved by the public health council. He shall serve for a term of six years and shall not be removed during the term for which he shall have been appointed, except upon written charges after a hearing and upon notice. He shall devote his whole time to the duties of his office and shall receive such compensation as the county board of health shall determine within the limits of the appropriations made by the board of supervisors. He shall, within his district, possess all the powers conferred upon and perform all the duties required of local health officers. Local health officers who continue to hold office as herein provided after the establishment of a county health district shall be deputies of the county health commissioner, who may require any such local health officer to perform within his

local jurisdiction any such duty. The county health commissioner may, upon the authorization of the county board of health and within the limits of the appropriations therefor, appoint such additional deputies, assistant deputies and other employees as may be required to fulfill in the county health district the purposes of this section. Such deputies and assistant deputies shall have the qualifications prescribed for health officers by regulation of the public health council.

The county health commissioner may designate in writing a deputy to whom shall be delegated all the powers and duties of the county health commissioner when such county health commissioner is unable to act by reason of absence or disability.

The county board of health shall have the power to remove the health officer of any local health district included within such county health district or any deputy or assistant deputy of the county health commissioner for cause, upon charges, and after such health officer or deputy or assistant deputy has, with due notice, been given an opportunity to be heard. The proceedings in connection with such removal shall be subject to review by the state commissioner of health, who within thirty days of the receipt of an order of a county board of health removing such local health officer, may revoke such order whereupon such order shall be void.

8. Except as hereinafter provided, local health districts within the area of any county health district, shall continue to exist as subdivisions of the county health district, and the local boards of health shall continue to exist and to retain their powers and duties subject to the rulings and regulations of the county board of health, and may continue to appoint local health officers for such local health districts as provided by law. In county health districts when the county board of health shall have been appointed and organized and the county health commissioner shall have been appointed and has qualified, the local boards of health and health officers of all incorporated villages having a population of less than three thousand according to the latest federal census and of all consolidated health districts not containing a city or village having a population of three thousand or more according to the latest federal census and of all towns included in such district, shall thereupon cease to exist as such.

The governing authorities of any city, or any village containing a population of three thousand or more according to the latest federal census, or any consolidated health district containing such a village may abolish such city, village or consolidated health district as a local health district, whereupon all the powers and duties of the local board of health of such local health district shall devolve upon the county health board and all the powers and duties of the local health officer of such local health district shall devolve upon the county health commissioner. A town board of any town, the local board of health of which has been abolished pursuant to the provisions of this section, when authorized by a proposition submitted and adopted in the manner provided by law, may employ a public health nurse or public health nurses, qualified as provided by regulation of the public health council, and make the necessary appropriation therefor. Such public health nurse, or nurses, shall work under the direction of the county health commissioner.

The governing authorities of any city which has consented to be included in a county health district, may, at any time after three years shall have elapsed since such city has been included in a county health district, by resolution adopted by said authorities, provide for the withdrawal of such city from a county health district. Before such action is taken an opportunity shall be given for a public hearing before such governing authorities. Public notice shall be given and the county health board shall be notified in writing, at least thirty days in advance, of the time and place of such hearing. Such action by the said governing authorities shall become effective at

a time to be stated in the resolution, which said time shall be not less than thirty days from the date of the adoption of said resolution. Upon the date when such resolution shall become effective, the local health district of such city shall be reinstated and it shall have all the powers of a local health district as though such city had not been included in the county health district pursuant to the provisions of this act.

9. The health officer of each city, village, and consolidated health district included as part of any county health district, shall transmit daily all original reports of communicable disease cases, and all registrar's reports of deaths from communicable disease, to the county health commissioner. The county health commissioner shall transmit the original reports of communicable disease cases, within twenty-four hours after he receives them, to the state health department.

10. Annually the county board of health shall prepare an estimate of the necessary expenses of such county health district, for the ensuing fiscal year which shall be transmitted to the board of supervisors of the county within such period of time as shall enable the board of supervisors to inquire into the necessity for the items of such estimate. The board of supervisors shall levy a tax upon the taxable property within the county health district, sufficient to provide such sums as the board of supervisors may deem necessary to meet the expenses of such county health district. In preparing the items of any estimate of the expense of a county board of health, the board of supervisors may lawfully include therein and approve all items of expenses which may in any degree tend to promote the efficiency of the administration of the provisions of the public health law and other regulations adopted pursuant to the authority thereof.

11. The board of supervisors of any county in which a county health district has been established, the boundaries of which are coterminous with the county, shall have power to abolish the board of managers of the county laboratory of such county, established and operated under the provisions of sections twenty-e to twenty-f, both inclusive, of the public health law, and to confer the powers and duties of such board of managers of such county laboratory upon the county board of health. The board of supervisors of any such county, with the approval of the state commissioner of health, may abolish the board of managers of the county tuberculosis hospital established and operated in such county under the provisions of sections forty-five to forty-nine-e, both inclusive, of the county law, and confer the powers and duties of such board of managers upon the county board of health.

12. The board of supervisors of any county in which a county health district has been or may be established may abolish such district at any time after three years shall have elapsed following its establishment, provided, however, that before such action may be taken an opportunity shall be given for a public hearing. Public notice shall be given and the state commissioner of health shall be notified in writing, at least thirty days in advance, of the time and place of such hearing. Such action by the board of supervisors shall become effective thirty days after the adoption of the resolution to abolish such county health district, and at the end of such period the terms of office of the members of the county board of health and of the county health commissioner shall terminate. (Added by L. 1921, ch. 509; amended by L. 1923, ch. 636, L. 1926, ch. 499, L. 1927, ch. 283, L. 1929, ch. 371, L. 1930, ch. 335, L. 1932, ch. 81, L. 1935, ch. 282, L. 1938, ch. 530, L. 1943, ch. 258, and L. 1943, ch. 710, effective April 2, 1945.)

§ 20-c. **Laboratories.*** The board of supervisors of any county may establish therein a laboratory or laboratories which shall serve the whole or part of the county. In the resolution of the board of supervisors establishing such laboratory they shall define the area which it is intended to serve, which area from time to time may by resolution be altered. Provided, how-

* See § 4-b and footnote and § 20-b, subd. 11.

ever, that in defining such area the territory included in a town shall not be divided and provided further, that no city or any part thereof shall be included in the area so defined, unless the mayor and the common council, or the officials exercising similar powers, shall have consented thereto. The services of such laboratories shall be rendered at a moderate charge or free.

If, however, it is the intention of the board of supervisors to apply for state aid for such proposed laboratory, under the provisions of section twenty-h of this article, an application for such state aid for such proposed laboratory shall be transmitted by the board of supervisors to the state commissioner of health. On or before January first of each year the state commissioner of health shall file with the governor a statement of the aggregate amount of such applications for state aid for proposed new laboratories in addition to the aggregate amount of applications for state aid for laboratories already established.

Such sums, as revised in the discretion of the governor, shall be the estimate of state aid under this article to be used in the preparation of the executive budget.

Subsequent to enactment of the appropriation by the legislature the state commissioner of health shall revise such applications for state aid as necessary to bring the aggregate of all applications within the total appropriations available.

The board of supervisors may, in lieu of the establishment of a laboratory and with the approval of the state commissioner of health, provide for laboratory service by contracting with an established laboratory which is conveniently located and when such service shall have been provided, shall be entitled to such state aid as would be provided for under this act if the amount expended for service were expended for maintenance and operation of a laboratory established in accordance with the provisions of this act.

Upon the petition signed by two hundred or more taxpayers of the county or district to be served by such a laboratory, the governing body of that county or district at the next date for filling an elective office shall hold a referendum upon the question of establishing a laboratory the construction of which is to be financed by taxes levied for the fiscal year in which the expenditures therefor are to be made. If a majority of the votes cast are in favor of establishing such a laboratory it shall be mandatory upon the governing body of that county or district to take the steps necessary for the establishment and maintenance of such a laboratory as provided for by this act. Nothing contained in this section shall be construed to prevent the financing of any expenditure, in whole or in part, pursuant to the local finance law. (Added by L. 1923, ch. 638; amended by L. 1940, ch. 731, and L. 1943, ch. 710, effective April 2, 1945.)

§ 20-d. Powers of boards of supervisors in relation to laboratories. The board of supervisors, when they shall have determined to establish such a laboratory shall have the following powers:

1. To acquire by purchase, exchange or otherwise, necessary real property, building or rooms or to erect necessary buildings.

2. To cause to be assessed, levied and collected in the same manner as other charges against the county, such sums of money as it shall deem necessary for laboratory purposes. Provided, however, that where a laboratory is intended to serve less than a whole county the expenditures made in connection therewith shall be assessed only against the area served by the laboratory.

3. To accept and hold in trust for the county any grant or device of land or any gift or bequest of money or other personal property or any donation to be applied, principal or income, or both, for the benefit of said laboratory.

† So in original. [Word misspelled.]

4. To appoint a board of managers for the laboratory which shall consist of at least five members, two of whom shall be physicians duly licensed to practice in the state of New York. The county medical society may present to the board of supervisors a list of physicians residing in the county from which the board may choose the medical members of the board of managers. The board of managers shall hold a meeting at least four times in each year, and at such other times as it may deem necessary and each member attending meetings shall receive his actual and necessary expenses incident thereto, to be audited and paid in the same manner as other expenses of the laboratory. In counties having a county board of health and a county health officer, the president of the county board of health and the county health officer shall be members of the board of managers ex-officio. The members of such board, with the exception of the members ex-officio, shall first be appointed so that the term of one member shall expire within one year from the first day of January of the year in which he shall have been appointed, the term of another member shall expire within two years of the first day of January of the year in which he shall have been appointed, the term of another member shall expire within three years of the first day of January of the year in which he shall have been appointed, the term of another member shall expire within four years of the first day of January of the year in which he shall have been appointed, and the term of another member shall expire within five years of the first day of January of the year in which he shall have been appointed. Thereafter the terms of membership shall be made for five years from the first day of January of the year in which the appointment is made. Nothing in this act shall be construed to repeal or amend any provision of law not inconsistent herewith relating to laboratories in counties or to abrogate any powers of boards of supervisors relating thereto. (Added by L. 1923, ch. 638; amended by L. 1943, ch. 710, effective April 2, 1945.)

§ 20-e. Powers of boards of managers of laboratories. The board of managers of each laboratory shall have the following powers and duties:

1. To elect a chairman, vice-chairman and a secretary.
2. To appoint a director or a bacteriologist in charge of the laboratory. Any person appointed as such director shall comply with such qualifications as may be prescribed by the public health council.
3. To fix the salaries of the director of the laboratory and all other employees within the limits of the appropriation made therefor by the board of supervisors.
4. To exercise general management and control of said laboratory, of the grounds, buildings, rooms, employees and of all matters relating to the government, discipline, contracts and fiscal concerns thereof.
5. To make such rules and regulations as may be necessary in relation to the administration of the laboratory and the fees to be charged for laboratory service, not inconsistent with the provisions of this act.
6. Notwithstanding any other general or special law, to erect all additional buildings found necessary after the laboratory has been placed in operation and make all necessary improvements and repairs within the limits of the appropriations made therefor.
7. To make to the board of supervisors annually at such time as said supervisors shall direct a detailed report of the operation of the laboratory during the calendar year, the number and kind of specimens examined and the results of such examinations, together with suitable recommendations and such other matters as may be required of them and full and detailed estimates of the appropriations required during the ensuing year for all purposes including maintenance, erection of buildings, repairs, renewals, extensions, improvements, betterments or other necessary purposes.

8. To establish branch laboratories if the area to be served by the laboratory is so large, if its topography is such as to make access to the laboratory difficult, or for any other reason such action seems reasonable or desirable. (Added by L. 1923, ch. 638.)

§ 20-f. **Powers of the director of a laboratory.** The director or the bacteriologist in charge of such laboratory, subject to the board of managers, shall:

1. Equip the laboratory with all necessary furniture, appliances, fixtures and other needed facilities for the conduct of laboratory work and purchase all necessary supplies within the appropriations made therefor.

2. Have general supervision and control of the internal affairs and work of the laboratory. He may make and enforce such rules, regulations and orders as he may deem necessary, not inconsistent with law or with the rules and regulations of the board of managers.

3. Appoint employees of the laboratory within the limits of his appropriations, and remove them.

4. Cause to be kept proper accounts and records of the business and operation of the laboratory, including such records relating to specimens examined and render such reports as may be required by law or by the regulations of the state commissioner of health; certify all bills and accounts including salaries and wages, and transmit them to the board of supervisors which shall provide for their payment in the same manner as other charges against the county. The board of supervisors of a county not having a purchasing agent may make an appropriation for the maintenance of such laboratory and direct the county treasurer to pay all bills, accounts, salaries and wages which are approved by the director of the laboratory within the amount of such appropriation, subject to such regulations as to the payment and audit thereof as the board of supervisors may deem proper. (Added by L. 1923, ch. 638.)

§ 20-g. **Laboratories in cities.** Nothing contained in section twenty-e to twenty-f hereof inclusive, shall be construed to repeal or amend any provision of law under which any health function or activity may be carried on in any city, or to transfer or affect any authority in relation to health activities now being exercised in any city by any public board or officers. Provided, however, that any public board or officers of a city now exercising health functions may, with the approval of the mayor, contract with the board of managers of any laboratory for the purpose of cooperation and to join and share facilities. If a city desires to avail itself of the state aid provided for in section twenty-h of this act, the common council or any body exercising similar powers in any city with the approval of the board of estimate, if such exists, shall have the power to establish a laboratory in such city. Upon the establishment of such laboratory by such city, all the powers and duties of the board of supervisors, in relation to laboratories hereinbefore provided for, shall devolve upon the common council or other body exercising similar powers, except that the mayor shall appoint the board of managers of such laboratory and that the salaries of the director and other employees of the laboratory, and contracts to be made for, by, or on behalf of the laboratory and appropriations for the acquisition of sites and buildings and for maintenance, shall all be under the control of the same officials as now have control of similar items and shall be governed by the same provisions of law. In cities when more than one laboratory is established, but one board of managers shall be appointed, which shall have jurisdiction over all the laboratories established or operating under this act in said city. In cities of the second and third class the president of the local board of health, if such office exists, and the local commissioner of health or health officers shall be ex-officio members of the board of managers of the laboratory. (Added by L. 1923, ch. 638.)

§ 20-h. **State aid.*** Where a laboratory as hereinbefore provided for shall have been established, the state, through the legislature, shall provide the following aid; a grant of an amount not to exceed one-half of the actual cost of maintenance of the laboratory or laboratories not in excess of seven thousand five hundred dollars per annum for each laboratory and of twenty-five hundred dollars toward the initial installation and equipment of such laboratory.

The salaries and traveling expenses of employees of the state department of health engaged in supervision or inspecting laboratories unless otherwise provided for and other expenses necessarily incurred by the state department of health in the execution and enforcement of this act shall be paid from the sum appropriated toward maintenance and operation of laboratories as hereinbefore specified.

The board of supervisors of any county or the common council or other body exercising similar powers of any city which has heretofore established and is maintaining a laboratory or which is already providing laboratory service by contract with another laboratory may apply for state aid in maintaining and operating such laboratory or in otherwise providing such laboratory service and upon complying with the provisions and requirements of this act, shall be entitled to such state aid, provided however, that in the event that the total amount appropriated for state aid is not sufficient to pay in full the state aid and other expenses hereinbefore provided for, counties or cities establishing laboratories or providing laboratory service under this act shall be given precedence and any balance remaining of moneys appropriated under this act, after the payment of full state aid to such counties or cities, shall be allotted to such counties or cities as have heretofore established and are now maintaining laboratories or are providing laboratory service by contract and have applied for state aid.

The work of all laboratories, except in the city of New York, established or receiving aid in accordance with the provisions of this act shall be inspected and standardized by the state department of health, and no state aid shall be given to any laboratory under the provisions unless the area of the district, site, design and construction of the buildings, equipment, work and conduct of such laboratory shall be first approved in writing, after inspection, by the state commissioner of health or his representative, the director of the division of laboratories and research.

The comptroller after receiving the written approval of the state commissioner of health, hereinbefore provided for, shall determine the amount due in any one year to the various laboratories in the state under this act, and shall draw his warrant upon the state treasury in favor of the county treasurer of each county or the city treasurer of each city for the total amount to be paid to each laboratory in such county or city or in consideration of laboratory service contracted for in such county or city as shall be determined by him and shall indicate the amount to be paid to each laboratory or to each county or city in consideration of laboratory service contracted for. The county or city treasurer shall pay out such amount in the same manner and upon the same vouchers and proof as all other moneys devoted to such laboratory.

The board of managers of a laboratory may appeal from any decision of the comptroller or of the state commissioner of health or any refusal to furnish the written approval herein provided for to the governor, and the action of the governor shall be final and conclusive and his approval, if granted, shall be accepted by the comptroller in lieu of the certificate of the commissioner of health herein provided for.

Laboratories established or receiving aid under this act, except in the city of New York, shall be under the supervision of the commissioner. (Amended by L. 1941, ch. 634, and L. 1944, ch. 298.)

* See §§ 19, 19-b.

§ 21. **General powers and duties of local boards of health.** Every such local board of health shall meet at stated intervals to be fixed by it, in the municipality. The presiding officer of every such board may call special meetings thereof when in his judgment the protection of the public health of the municipality requires it, and he shall call such meeting upon the petition of at least twenty-five residents thereof, of full age, setting forth the necessity of such meeting. Every such local board, subject to the provisions of the public health law and of the sanitary code, shall prescribe the duties and powers of the local health officer, who shall be its chief executive officer, and direct him in the performance of his duties, and fix his compensation, which in case of health officers of cities, towns, villages and consolidated health districts, having a population of eight thousand or less, shall not be less than the equivalent of fifteen cents per annum per inhabitant of the city, town or village according to the latest federal or state enumeration; and in cities, towns, villages and consolidated health districts having a population of more than eight thousand, shall not be less than twelve hundred dollars per annum. In addition to his compensation so fixed, the board of health must allow the actual and reasonable expenses of said health officer in the performance of his official duties and in going to, attending and returning from the annual sanitary conference of health officers, or equivalent meeting, held yearly within the state, and conferences called by the district state health officer of the district, and whenever the services rendered by its health officer shall include the care of smallpox, or a venereal disease, the board of health shall allow, or whenever such services are extraordinary, by reason of infectious diseases, or otherwise, or include the taking of cultures for release from isolation in cases of diphtheria, they may in their discretion, allow to him such further sum in addition to said fixed compensation as shall be equal to the charges for similar public medical services commonly received by practicing physicians in the locality, audited by the town board of a town, by the board of trustees of a village or by the proper auditing board of a city, which said expenses and said additional compensation shall be a charge upon and paid by the municipality as provided in section thirty-five of this chapter. The regular compensation of a health officer appointed jointly by two or more local boards of health for two or more towns or villages shall be fixed jointly by such boards in such sum as they shall determine in accordance with the provisions of this section, and such compensation, together with the expenses of the health officer in the performance of his duties and in attending the annual sanitary conference or equivalent meeting and conferences called by the district state health officer, shall be allowed by the local boards and paid by the municipalities in the proportions to each as shall have been determined in the resolutions or ordinances authorizing the joint appointment of the health officer; provided, however, that claims for service and expenses in the suppression of rabies and for services in the care of smallpox or venereal disease or when the services are otherwise extraordinary shall be allowed by the particular local board and paid by the particular municipality in or for which the services were rendered and the expenses incurred in the same manner and to the same extent as though the appointment of the health officer were made separately, rather than jointly, by the board of health of such municipality. Every such local board shall make and publish from time to time all such orders and regulations, not inconsistent with the provisions of the sanitary code, as it may deem necessary and proper for the preservation of life and health and the execution and enforcement of this chapter in the municipality. It shall make without publication thereof, such orders and regulations for the suppression of nuisances and concerning all other matters of its judgment detrimental to the public health in special or individual cases, not of general application, and serve copies thereof upon

the owner or occupant of any premises whereon such nuisances or other matters may exist, or upon which may exist the cause of other nuisances to other premises, or cause the same to be conspicuously posted thereon. The health officer may employ such persons as shall be necessary to enable him to carry into effect the orders and regulations of the board of health and the provisions of the public health law and of the sanitary code, and fix their compensation within the limits of the appropriation therefor. Upon certification of the existence of the disease known as rabies, as provided in section twenty-five-a of this chapter, the health officer is authorized to incur the service and expenses necessary in the suppression of such rabies. The claim for such service and expenses, approved by such health officer, shall be paid by the fiscal officer of the health district from funds in his custody on presentation without further or other audit or may be paid pursuant to the local finance law. Notwithstanding the foregoing provision of this section, claims for service and expenses incurred by the health officer for the suppression of the disease known as rabies in any health district in Westchester county, shall be paid from moneys appropriated in the same manner as other claims against the district are audited and paid. The health officer, with the consent of the board of health in a town or village and with the consent of the board or official having power to appoint a health officer in a city may appoint a competent physician to act as health officer during his temporary absence or incapacity on account of illness or other cause for a period not exceeding three months. The health officer shall report immediately to the state department of health the name and address of the physician so appointed. Such acting health officer, during the period for which he is appointed, shall have all of the rights, powers and duties imposed upon the health officer by the public health law and the sanitary code. The board of health in a town or village and the body having authority to fix the salary of a health officer in a city may allow such compensation as it deems reasonable covering such temporary service. The appointment of an acting health officer in a case where the regular health officer shall have been appointed jointly by two or more local boards of health for two or more towns or villages shall be with the consent of the appointing local boards, and the compensation of such acting health officer shall be allowed and paid in the same manner as the fixed compensation of the regular health officer. The board of health may issue subpoenas, compel the attendance of witnesses, administer oaths to witnesses and compel them to testify, and for such purposes it shall have the same powers as a justice of the peace of the state in a civil action of which he has jurisdiction. It may designate by resolution one of its members to sign and issue such subpoenas. No subpoena shall be served outside the jurisdiction of the board issuing it, and no witness shall be interrogated or compelled to testify upon matters not related to the public health. It may issue warrants to any constable or policeman of the municipality to apprehend and remove such persons as cannot otherwise be subjected to its orders or regulations, and a warrant to the sheriff of the county to bring to its aid the power of the county whenever it shall be necessary to do so. Every warrant shall be forthwith executed by the officer to whom directed, who shall have the same powers and be subject to the same duties in the execution thereof, as if it had been duly issued out of a court of record of the state. Every such local board may prescribe and impose penalties for the violation of or failure to comply with any of its orders or regulations, or any of the regulations of the state sanitary code, not exceeding one hundred dollars for a single violation or failure, to be sued for and recovered by it in the name and for the benefit of the municipality; and may maintain actions in any court of competent jurisdiction to restrain by injunction such violations, or otherwise to enforce such orders and regulations. Nothing in this section contained shall be construed

to alter or repeal any existing provision of law declaring such violations or any of them misdemeanors or felonies or prescribing a penalty therefor. The provisions of this section relating to the care of venereal disease shall not apply to municipalities where a satisfactory clinic is reasonably available. (Amended by L. 1909, ch. 480, L. 1913, ch. 559, L. 1926, ch. 308, L. 1929, ch. 375, L. 1930, ch. 696, L. 1935, ch. 587, L. 1937, ch. 649, L. 1938, ch. 660, and L. 1943, ch. 710, effective April 2, 1945.)

§ 21-a. Powers and duties as to sewers.* Whenever such local board of health in any incorporated village shall deem the sewers of such village insufficient to properly and safely sewer such village, and protect the public health, it shall certify such fact in writing, stating and recommending what additions or alterations should in the judgment of such board of health be made, with its reasons therefor, to the state commissioner of health for his approval, and if such recommendations shall be approved by the state commissioner of health, and the plans therefor be approved by the state department of health, it shall be the duty of the board of trustees or other board of such village having jurisdiction of the construction of sewers therein, if there be such a board, whether sufficient funds shall be on hand for such purpose or not, to forthwith make such additions to or alterations in the sewers of such village and execute such recommendations, and the expenses thereof shall be paid for wholly by said village in the same manner as other village expenses are paid or by an assessment of the whole amount against the property benefited, or partly by the village and partly by an assessment against the property benefited, as the board of trustees of such village shall by resolution determine. If the board of trustees shall determine that such expenses shall be paid partly by the village and partly by an assessment against the property benefited, as authorized by this section, it shall in the resolution making such determination fix the proportion of such expense to be borne by each, and the proportion thereof to be raised by an assessment against the property benefited shall be assessed and collected in the manner provided by the village law for the assessment and collection of sewer assessments. Said village is hereby authorized to raise such sum as may be necessary for the payment of the expenses incurred, which are a village charge, if any, as herein provided, in addition to the amount such village is now authorized to raise by law for corporation purposes, and such board shall have the right to acquire such lands, right of way, or other easements, by gift, or purchase, or in case the same cannot be acquired by purchase may acquire the same by condemnation in the manner provided by law. (Added by L. 1913, ch. 559; amended by L. 1921, ch. 510, and L. 1928, ch. 395.)

§ 21-b. General powers and duties of health officers. Health officers, in addition to such other duties as may be lawfully imposed upon them and subject to the provisions of the public health law and the sanitary code, shall perform the following duties:

1. Make an annual sanitary survey and maintain sanitary supervision over the territory within their jurisdiction.

2. Make a sanitary inspection periodically of all places of public assemblage, and report thereon to those responsible for the maintenance of such places of public assemblage.

3. Promote the spread of information as to the causes, nature and prevention of prevalent diseases, and the preservation and improvement of health.

4. Take such steps as may be necessary to secure prompt and full reports by physicians of communicable diseases, and prompt and full registration of births and deaths.

5. Enforce within their jurisdiction the provisions of the public health law and the sanitary code.

* See Art. V.

6. Attend the annual conferences of sanitary officers called by the state department of health, and local conferences within his sanitary district, to which he may be summoned by the district state health officer thereof.*

The written reports of public health officers, inspectors, nurses and other representatives of public health officers on questions of fact under the public health law or under the sanitary code or any local health regulation shall be presumptive evidence of the facts so stated, and shall be received as such in all courts and places. The persons making such reports shall be exempt from personal liability for the statements therein made, if they have acted in good faith.

No health officer, inspector, public health nurse, or other representative of a public health officer, and no person or persons other than the city, village or town by which such health officer or representative thereof is employed shall be sued or held to liability for any act done or omitted by any such health officer or representative of a health officer in good faith and with ordinary discretion on behalf or under the direction of such city, village or town pursuant to its regulations or ordinances, or the sanitary code, or the public health law. Any person whose property may have been unjustly or illegally destroyed or injured pursuant to any order, regulation or ordinance, or action of any board of health or health officer, or representative of a health officer, for which no personal liability may exist as aforesaid, may maintain a proper action against the city, village or town for the recovery of proper compensation or damages. Every such suit must be brought within six months after the cause of action arose and the recovery shall be limited to the damages suffered. (Added by L. 1913, ch. 559; amended by L. 1929, ch. 372.)

§ 21-c. **Public health nurses.*** Each health officer or other official exercising similar duties, by whatever official designation he may be known, shall, with the approval and consent of the board of health of his district, have power to employ such number of public health nurses, qualified as provided by regulation of the public health council, as in his judgment may be necessary within the limits of the appropriation made therefor by the city, town or village. They shall work under the direction of the health officer and may be assigned by him to the reduction of infant mortality, the examination or visitation of school children or children excluded from school, the discovery or visitation of cases of tuberculosis, the visitation of the sick who may be unable otherwise to secure adequate care, the instruction of members of households in which there is a sick person, or to such other duties as may seem to him and to the board of health appropriate. (Added by L. 1913, ch. 559; amended by L. 1931, ch. 416, and L. 1935, ch. 282.)

§ 22. **City health officers.** In cities of more than fifty thousand population according to the latest federal census the local health officer hereafter appointed shall devote his entire time to duties of his office and shall not engage in the practice of medicine. (Added by L. 1931, ch. 473. Formerly section 20-c; renumbered by L. 1941, ch. 42.)

§ 23. **Burial and burial permits.** (Repealed by L. 1913, ch. 619. See Vital Statistics Law, article XX herein.)

§ 24. **Regulating interments in cemeteries.** Whenever the common council of any city of the third class shall deem that further interments in any cemetery in such city would be detrimental to the public health, it may by resolution direct its clerk to cause a notice to be served upon the person or corporation owning or controlling such cemetery and published once in a

* See § 4-a, subd. 4; and § 21.

* See §§ 4-a and 21-b; County Law, § 12, subd. 44-a, § 45, subd. 6, § 47, subd. 9; General Municipal Law, § 77-b; Education Law, § 571; and General Business Law, § 170.

week for three successive weeks in two papers published in such city, stating a time and place not less than thirty days after service and first publication of such notice, at which any person interested may show cause to the common council why further interments in such cemetery should not be prohibited. At the time and place specified in such notice the common council shall hear all persons desiring to be heard, and if upon such hearing it appears that further interments in such cemetery will be detrimental to public health, the common council may by resolution prohibit further interments therein. If such resolution is adopted a certified copy thereof shall be filed by the clerk of the common council with the board of health of such city, and thereafter such board shall not issue any permits for interments in such cemetery. The action of the common council in passing such resolution may be reviewed within thirty days thereafter by writ of certiorari as provided by the code of civil procedure.

§ 24-a. **Persons, firms, and corporations procuring blood donors to be licensed.** No person, firm or corporation shall engage in the business of procuring persons to donate human blood for the purpose of transfusion into another human being unless a license first be obtained from the local health officer. The state commissioner of health shall prescribe such form of license for the registration of applicants for license. Upon receipt of an application for a license, accompanied by a fee of five dollars, the local health officer shall conduct an investigation into the character of the person, firm or corporation applying for a license and if satisfied that the interest of public health will be promoted, he shall issue a license to such person, firm or corporation to conduct such business for one year from the date of such license. Such license may be renewed on expiration thereof on payment of a like fee for a period of one year. It shall be unlawful for any person engaged in the business of donating human blood to donate such human blood for transfusion unless the donor thereof present a certificate from a physician registered under the laws of this state showing a satisfactory physical examination to have been made within thirty days immediately preceding the offering of such blood donation and that such donor was free from communicable disease. Violation of this section shall constitute a misdemeanor, punishable on conviction by a fine of not exceeding fifty dollars or by imprisonment for not exceeding six months, or both such fine and imprisonment. (Added by L. 1930, ch. 326; amended by L. 1941, ch. 415.)

§ 25. **Infectious and contagious or communicable diseases.** Every local board of health and every health officer shall guard against the introduction of such infectious and contagious or communicable diseases as are designated in the sanitary code, by the exercise of proper and vigilant medical inspection and control of all persons and things infected with or exposed to such diseases and may provide for care and isolation of cases of communicable disease in a hospital or elsewhere when necessary for protection of the public health. They may, subject to the provisions of the sanitary code, prohibit and prevent all intercourse and communication with or use of infected premises, places and things, and require, and if necessary, provide the means for the thorough purification and cleansing of the same before general intercourse with the same or use thereof shall be allowed. Every physician shall immediately give notice of every case of infectious and contagious or communicable disease required by the state department of health to be reported to it, to the health officer of the county, city, town or village where such disease occurs, and no physician being in attendance on such case, it shall be the duty of the superintendent or other officer of an institution, householder, hotel or lodging housekeeper, or other person where such case occurs, to give such notice, provided that the public health council may require that when cases of certain communicable diseases occur (a) in dis-

tricts of less than fifty thousand population not having a whole-time health officer, or (b) in state institutions or (c) in tuberculosis hospitals or sanatoria, such cases shall be reported directly to the state department of health or its district state health officer. Such notice shall contain such information concerning the case as shall be required by the sanitary code. Except when reported from a state institution or tuberculosis hospital, sanatorium, clinic or dispensary the physician or other person giving such notice shall be entitled to the sum of twenty-five cents therefor, which shall be a charge upon and paid by the municipality where such case occurs. Whenever an examination for diagnosis by a laboratory or by any person other than the physician in charge of the person from whom the specimen is taken, of any specimen, discloses the existence of a case of communicable disease, or the results obtained in the examination of a specimen are needed for purposes of release from quarantine or observation, the person in charge of such laboratory or the person making such examination shall immediately report the same, together with all the facts in connection therewith, to the local or state health official to whom the attending physician is required to report such case. The person in charge of such laboratory or the person making such examination shall keep for a period of time to be specified by the state commissioner of health a record of all the facts in connection with such examination, including the identity of the person from whom the specimen is taken and the name of the physician, if any, sending such specimen. Every local health officer shall report to the state department of health, promptly, all cases of such infectious and contagious or communicable diseases, as may be required by the state department of health, and for such reporting of diseases required to be reported to him the health officer of a village or town shall be paid by the municipality employing him, upon the certification of the state department of health, a sum not to exceed twenty cents for each case so reported. Reports of cases of tuberculosis, syphilis, chaneroid and gonorrhea including laboratory reports, shall not be divulged or made public so as to disclose the identity of the persons to whom they relate, by any person; except insofar as may be authorized by the public health council. The board of health shall provide at stated intervals, a suitable supply of vaccine virus, of a quality and from a source approved by the state department of health, and during an actual epidemic of small pox obtain fresh supplies of such virus at intervals not exceeding one week, and at all times provide thorough and safe vaccination for all persons in need of the same. If a pestilential, infectious or contagious disease exists in any county almshouse or its vicinity, and the physician thereof shall certify that such disease is likely to endanger the health of its inmates, the county superintendent of the poor may cause such inmates or any of them to be removed to such other suitable place in the county as the local board of health of the municipality where the almshouse is situated may designate, there to be maintained and provided for at the expense of the county, with all necessary medical care and attendance until they shall be safely returned to such almshouse or otherwise discharged. The health officer, commissioner of health, or boards of health of the cities of the first class shall report promptly to the state department of health all cases of smallpox, typhus and yellow fever and cholera and the facts relating thereto. (Amended by L. 1913, ch. 559, L. 1918, ch. 177, L. 1935, ch. 149, L. 1936, ch. 237, L. 1937, ch. 414, L. 1939, ch. 159, L. 1942, ch. 95, and L. 1944, ch. 229.)

§ 25-a. **Prevention of the spread of rabies.*** Whenever the disease known as rabies shall exist among dogs in any general health district, consolidated health district, city, village or town, or in the vicinity thereof, and the state commissioner of health shall so certify to the health officer of such district or municipality, it shall be the duty of such health officer immediately to

* See Agriculture and Markets Law, Art. 7; and Sanitary Code.

publish a notice of the existence of such disease, together with a copy of this section by publication in a newspaper generally circulated within such general health district, consolidated health district, city, village or town or by posting in several conspicuous places, or by both such publication and posting. Thereafter, until the state commissioner of health shall have certified that rabies no longer exists in such general health district, consolidated health district, city, village or town and due notice shall have been given, it shall be unlawful for any person owning, boarding or otherwise keeping or having in his custody a dog within such general health district, consolidated health district, city, village or town to permit such dog to be at large elsewhere than on the premises of the owner, except it be on the premises of another person with the knowledge and assent of such other person, unless muzzled with a properly fitting muzzle of a type which will not permit such dog to bite any person or other animal. Any person owning or harboring a dog and who shall permit such dog to be at large in violation of the provisions of this section is guilty of a misdemeanor and shall be subject to a fine of not to exceed twenty-five dollars for the first offense and for each subsequent offense to a fine of not less than twenty-five nor more than fifty dollars or by imprisonment in the county jail for not to exceed twenty-five days or by both said fine and imprisonment. During such period any duly appointed dog warden or any peace officer shall and any other person may seize and confine or kill any dog found unmuzzled in violation of this section. The person confining or killing a dog under the provisions of this section shall immediately report in writing the facts relating thereto to the local health officer. Such person shall not be held liable for damages for killing a dog found in violation of this section, provided that the facts relating thereto have been reported to the health officer as herein required. The local health officer shall forward such report or a copy thereof to the state department of health. Any peace officer and any duly appointed dog warden, except when such peace officer or dog warden receives a salary in lieu of other compensation, shall be entitled to a fee of four dollars for each dog seized and confined and for each dog killed in the enforcement of the provisions of this section. The expenses incurred in carrying out the provisions of this section shall be paid from moneys raised or to be raised for the suppression of rabies, as provided in section twenty-one of this chapter. (Added by L. 1926, ch. 185; amended by L. 1929, ch. 375, L. 1935, ch. 343, and L. 1936, ch. 262.)

§ 25-b. Reporting of cancer and other malignant tumors. Every physician shall immediately give notice to the health officer of the county, city, town or village where such person resides, of every case of cancer or other malignant tumor under his care, provided that when such cases occur (a) in districts of less than fifty thousand population not having a whole-time health officer, or (b) in state institutions, such cases shall be reported directly to the state department of health or its district health officer. Such notice shall contain such information concerning the case as shall be required by the state commissioner of health. Whenever an examination of a tissue specimen in a laboratory discloses the existence of cancer or other malignant tumor, the person in charge of such laboratory or the person making such examination shall immediately report the same together with all the facts in connection therewith to the local or state health official to whom the attending physician is required to report such case. Like notice shall be given by the person in charge of any hospital, dispensary, asylum or other similar public or private institution of every case of cancer or malignant tumor coming under its care. In the case of patients treated in hospitals or institutions a single report shall be regarded as adequate provided it contains the name of the attending physician, the information required by the report heretofore specified essential data from the hospital records and

the pathological diagnosis if made at that institution. The reports of cases made pursuant to the provisions of this section shall not be divulged or made public so as to disclose the identity of any person to whom they relate, by any person, except in so far as may be authorized by the public health council. Nothing in this section, however, shall be construed to compel any individual to submit to medical or health department supervision or inspection. (Added by L. 1939, ch. 954; amended by L. 1940, ch. 145.)

§ 26. Nuisances.* Every such board shall receive and examine into all complaints made by any inhabitant concerning nuisances, or causes of danger or injury to life and health within the municipality, and may enter upon or within any place or premises where nuisances or conditions dangerous to life and health or which are the cause of nuisances existing elsewhere are known or believed to exist, and by its members or other persons designated for that purpose, inspect and examine the same. The owners, agents and occupants of any such premises shall permit such sanitary examinations to be made, and the board shall furnish such owners, agents and occupants with a written statement of the results and conclusions of any such examination. Every such local board shall order the suppression and removal of all nuisances and conditions detrimental to life and health found to exist within the municipality. Whenever the state department of health shall by notice to the presiding officer of any local board of health, direct him to convene such local board to take certain definite proceedings concerning which the state department of health shall be satisfied that the action recommended by them is necessary for the public good, and is within the jurisdiction of such board of health, such presiding officer shall convene such local board, which shall take the action directed.

A county health commissioner shall have equal authority with such board to investigate and abate public nuisances which may effect† health. (Amended by L. 1931, ch. 288.)

§ 27. Owner to bear all or part of expense of removal of waters wherein mosquito larvae breed.‡ Whenever the local board of health of a municipality shall determine that any accumulation of water wherein mosquito larvae breed, constitutes a nuisance or a danger or injury to life or health, the owner or owners of the premises on which the breeding place is located shall bear the expense of its suppression or removal, or so much thereof as the local board may have determined to be equitable as hereinafter provided, and for the amount thereof an action may be maintained in the name of the municipality and the same shall become a first lien on the premises as provided by sections thirty-one and thirty-two of this article. (Amended by L. 1913, ch. 559.)

§ 28. Assessing cost on property benefited. If such local board shall determine, in its discretion, that, owing to the natural conditions which are favorable to the breeding of mosquitoes and owing to the benefits to be secured to the public by the suppression of such conditions, some part or all of the expense of suppressing or removing a breeding place for mosquitoes should, in equity, be borne by the owners of the property which will be benefited by such suppression or removal, the local board shall make application as hereinafter provided, for the appointment of three commissioners, and the county court of the county in which are situated the premises whereon the breeding place is located, or, in case such premises are situated in more than one county, the supreme court, shall thereupon appoint three persons as commissioners to proceed with the work necessary

* See § 6; and § 1530, Penal Law.)

† So in original. [Word misspelled.]

‡ See county mosquito extermination commission, Public Health Law, Art. XXI; Conservation, Town, and County Laws regarding Drainage; and § 20-b.

for the suppression or removal of such breeding place, and to apportion, assess and collect the cost thereof, as so determined from the owners of such property benefited. Such appointment, apportionment, assessment and collection shall be made in the manner provided for the appointment of commissioners to suppress and remove any such breeding place by draining the premises on which such breeding place is located by means of ditches and channels constructed over lands belonging to others and the owners of the premises to be drained and to apportion, assess and collect the cost thereof from the owners of the property benefited thereby. In any case where, under the provisions of this article commissioners are to determine what property is benefited and to what extent said property is benefited by the suppression or removal of any such breeding place, such commissioners shall not be restricted in their determination to property immediately adjoining the premises whereon such breeding place is located; and, in apportioning the benefit to any property, such commissioners may consider any circumstances by reason whereof any property will be benefited by the suppression and removal of such breeding place.

§ 29. Municipality may bear part of expense. If such local board shall have determined that, owing to the natural conditions which are favorable to the breeding of mosquitoes and owing to the benefit to be secured to the public by the suppression of such conditions, a part of the expense of such suppression or removal shall be borne by the owner of such premises and a part thereof by the municipality wherein the premises are situated, such owner or occupant may proceed to suppress or remove such breeding place and shall be reimbursed by the municipality for such proportion of the reasonable expense of such suppression or removal as the local board shall have determined should be borne by the municipality. For the purpose of ascertaining the actual cost of such suppression or removal, the local board or its duly authorized agents may at all times have access to the premises whereon the work is being carried on; and the owner of the premises shall furnish to such local board such information as such local board may deem necessary or desirable for the purpose of ascertaining such actual cost. If in any such case the owner of the premises shall not, within a reasonable time, proceed to suppress or remove such breeding place, the local board may proceed to suppress and remove the same, and for such proportion of the expense of such suppression and removal as the local board shall have determined to be equitable, an action may be maintained against such owner, and the same shall become a first lien upon the premises as above provided.

§ 30. Assessing expense upon property benefited. If such local board shall deem it necessary, in order to suppress or remove any such breeding place, that any swamp, bog, meadow or other low or wet lands within the municipality over which said board has jurisdiction, shall be drained and that it is necessary, in order thereto, that a ditch or ditches or other channel for the free passage of water should be opened through lands belonging to a person or persons other than the owners of said swamp, bog, meadow or other low or wet lands, or that any other act or thing be done upon or over land belonging to others than the owners of the lands whereon such breeding place shall be located, such board shall make application for the appointment of three commissioners to construct and complete such channels and ditches for the free passage of water, or to do such other act or thing as such local board shall have determined to be necessary upon such lands in order to suppress or remove such breeding place, and to apportion, assess and collect the amount of the cost thereof from the owners of the lands which will be benefited by the suppression and removal of such breeding place. Such commissioners shall be appointed, and shall proceed, when

appointed, to construct and complete such channel and ditches, or do such other act or thing as may be necessary, and to apportion, assess and collect the cost of the same from the owners of the lands benefited by such suppression or removal, in the manner provided for the appointment of commissioners for the drainage of any swamp, bog, meadow or other low or wet land and the apportionment, assessment and collection of the cost of such drainage, by the drainage law, and this article shall be construed with the provisions of such drainage law. In case of conflict the provisions of this article shall be substituted for the provisions of such drainage law, but such parts of the provisions of the drainage law as are not necessarily superseded shall apply.

§ 31. **Removal of nuisances.*** If the owner or occupant of any premises whereon any nuisance or condition deemed to be detrimental to the public health exists or the cause of the existence elsewhere, fails to comply with any order or regulation of any such local board for the suppression and removal of any such nuisance or other matter, in the judgment of the board detrimental to the public health, made, served or posted as required in this article, such board or their servants or employees may enter upon the premises to which such order or regulation relates, and suppress or remove such nuisance or other matter. The expense of such suppression or removal shall be paid by the owner or occupant of such premises, or by the person who caused or maintained such nuisance or other matters, and the board may maintain an action in the name of the municipality to recover such expense, and the same when recovered shall be paid to the treasurer of the municipality, or if it has no treasurer to its chief fiscal officer, to be held and used as the funds of the municipality. Whenever the suppression or removal of such nuisance or conditions detrimental to health demand the immediate expenditure of money, every such local board of health shall be authorized to use for such purpose any money in the hands of the board, or may call on the city council for such money. All such moneys so expended shall be immediately repaid to the fund or source whence they were received on the recovery of the same by action or otherwise from the persons responsible for the expenses of suppression or removal. (Amended by L. 1913, ch. 559, and L. 1943, ch. 710, effective April 2, 1945.)

§ 32. **Expenses of abatement of nuisances a lien upon the premises.** If execution upon a judgment for the recovery of the expense of the suppression or removal of a nuisance or other matter, pursuant to an order or regulation of any such local board, is returned wholly or in part unsatisfied, such judgment, if docketed in the place and manner required by law to make a judgment of a court of record a lien upon real property, shall be a first lien upon such premises, having preference over all other liens and incumbrances whatever. The board may cause such premises to be sold for a term of time for the payment and satisfaction of such lien and the expenses of the sale. Notice of such sale shall be published for twelve weeks successively, at least once in each week, in a newspaper of the city, village or town, or if no newspaper is published therein, in the newspaper published nearest to such premises. If the owner or occupant of the premises, or his agent, is known, a copy of such notice shall be served upon him, either personally, at least fourteen days previous to the sale, or by mail at least twenty-eight days prior thereto. The premises shall be sold to the person offering to take them for the shortest time, paying the amount unpaid on such judgment and interest and the expenses of such notice and sale. A certificate of the sale, signed and acknowledged by the president and secretary of the board, shall be made and delivered to the purchaser, and may be recorded as a conveyance of real property, and the purchaser shall

* See § 6 and footnote.

thereupon be entitled to the immediate possession of such premises, and, if occupied, may maintain an action or proceeding to recover the possession thereof against the occupant, as against a tenant of real property holding over after the expiration of his term; and the cost of any such action or proceeding, if not paid by the occupant, shall also be a lien upon such premises, having the same preference as the lien of such judgment, and the right of the purchaser to such premises shall be extended for a longer term, which shall bear the same proportion to the original term as the amount of such costs bears to the amount paid by the purchaser on such sale. The term of the purchaser at any such sale shall commence when he shall have acquired possession of the premises sold. At any time within six months after recording such certificate, the owner of the premises or any lessee, mortgagee or incumbrancer, thereof, or of any part of the same, may redeem the premises or any such part from such sale by paying to the purchaser the amount paid by him on the sale, and all cost and expenses incurred by him in any action or proceeding to recover possession with interest at the rate of ten per centum per annum thereon. If redemption is made by the owner, the right of the purchaser shall be extinguished; if by a lessee, the amount paid shall be applied as a payment upon any rent due or which may accrue upon his lease; if by a mortgagee or an incumbrancer, the amount paid shall be added to his mortgage, incumbrance or other lien, or if he have more than one to the oldest, and shall thereafter be a part of such mortgage, lien or incumbrance and enforceable as such.

§ 33. **Manufacturers in tenement houses and dwellings.** (Repealed by L. 1938, ch. 409.)

§ 34. **Jurisdiction of town boards.** A town board of health shall not have jurisdiction over any city or incorporated village or part of such city or village in such town.* (Amended by L. 1913, ch. 559.)

§ 35. **Expenses, how paid.**† All expenses incurred by any local board of health in the performance of the duties imposed upon it or its members by law shall be a charge upon the municipality, and shall be audited, levied, collected and paid in the same manner as the other charges of, or upon, the municipality are audited, levied, collected and paid. The taxable property of any incorporated village shall not be subject to taxation for maintaining any town board of health, or for any expenditure authorized by the town board, but the costs and expenditures of the town board shall be assessed and collected exclusively on the property of the town outside of any such village. (Amended by L. 1913, ch. 559.)

§ 36. **Relief of indigent Indians in case of epidemic.**§ Whenever an epidemic of a contagious or infectious disease shall prevail among the Indians of any nation, tribe or band in this state, the public welfare official of any town in which the reservation of such nation, tribe or band, is wholly or partly situated, may in accordance with rules and regulations adopted by the state commissioner of health, cause needed medical attendance, provisions and maintenance to be furnished to any indigent Indian residing in the town, who, or a member of whose family, is afflicted with such disease, while such disease shall continue; and the cost thereof after being audited as herein provided shall be a state charge. A verified statement of any expenses incurred under this section shall be transmitted by the public welfare official to the state commissioner of health. Such commissioner shall examine into the matter, and if satisfied that such expenses were properly and necessarily incurred in accordance with the rules and regula-

* Village health boards. Village Law, § 85.

† See Town Law, § 149-a.

§ See § 4-a, subd. 9 and Social Welfare Law, § 65, subd. 2.

tions of the state commissioner of health, shall approve the same, and the amount thereof, after audit by the comptroller, shall be paid from the state treasury on the warrant of the comptroller to such public welfare official. (Amended by L. 1927, ch. 48, and L. 1941, ch. 42.)

§ 36-a. **Providing for the care and maintenance of carriers of disease.**** Whenever an individual is declared by the state commissioner of health as being a carrier of typhoid fever bacilli and whenever, for the protection of the public health, the state commissioner of health shall have certified to the necessity of continued quarantine; or, whenever, in accordance with rules and regulations established by the public health council a carrier of the germs of typhoid fever is prevented from carrying on any occupation which would enable him to gain a livelihood, such individual may be given hospital or institutional care under the surveillance of the local health officer at the expense of the state if such hospital or institution in the judgment of the state commissioner of health be properly equipped for the care and maintenance of said individual.

When no such hospital or institution is available and when in the opinion of the state commissioner of health such individual may be cared for at home or in a private family with due regard to the protection of the public health the commissioner of health shall furnish necessary medical attendance and maintenance and designate the agency or person through which such medical attendance and maintenance shall be furnished. No expenditure for the purposes herein authorized shall be contracted for or incurred by any such agency or person until after such expenditure has been authorized and approved by the state commissioner of health. A verified statement of any such approved expense incurred hereunder shall be transmitted to the state commissioner of health. The commissioner of health shall examine this statement and if satisfied that such authorized expenses are correct and necessary in accordance with rules and regulations adopted by him he shall audit and allow the same and when so audited the amount thereof shall be paid by the state department of taxation and finance, division of finance, on the warrant of the state comptroller to such institution, agency or person. (Added by L. 1916, ch. 371; amended by L. 1930, ch. 297, and L. 1942, ch. 61.)

§ 37. **Mandamus.** The performance of any duty or the doing of any act enjoined, prescribed or required by this article, may be enforced by mandamus at the instance of the state department of health or its president or secretary, or of the local board of health, or of any citizen of full age resident of the municipality where the duty should be performed or the act done.

§ 38. **Exceptions and limitations as to city of New York.** Sections twenty to thirty-eight inclusive of this article shall not be construed to affect, alter or repeal laws now in force relating to the board of health of the city of New York nor the sanitary code duly adopted and now in force in such city. (Amended by L. 1913, ch. 559.)

§ 38-a. **Noxious weeds and growths; declaration of nuisance; determination of period of danger to public health; notice to remove, destroy and abate weeds and growths.** 1. Whenever in any city there shall be growing on any property therein any ragweed or other species of weed, plant or growth which is noxious or detrimental to the public health, or the seed, pollen or other emanation whereof, when carried through the air or otherwise dispersed, is noxious or detrimental to the public health, the local board of health of any such city may take and file upon its records what it shall regard as sufficient proof to authorize a declaration that the existence of any such growth is a nuisance or danger to the public health, and may thereupon

** See § 826-a; Sanitary Code; Administrative Rules; and Social Welfare Law.

enter the same upon its records as a nuisance and order the same to be removed, destroyed or otherwise abated on any property wherever found. Such local board may also take and file among its records what it shall regard as sufficient proof to authorize a declaration that at any season or period of the year there exists a particular and imminent danger to the public health by reason of the approaching period of pollination of any such growth and may enter such determination upon its record.

2. In addition to the mode of service of any notice or order of any local board of health authorized by any other section of this chapter, and during the period or season when a particular and imminent danger to public health arising out of the pollination of such weeds, plants or growth is determined to exist, any such local board may order the destruction of such weeds, plants or growths and the disposition thereof by posting a copy of such order conspicuously on the property where such noxious weeds, plants or growths are found, requiring the destruction or other disposition thereof as shall be directed by such order. The posting of such order shall be sufficient notice of such order to the owner, lessee, occupant of, or principal person or persons interested in such property of the nuisance created by such weeds, plants or growths.

3. If any such order is not complied with, or so far complied with as the local board of health shall regard as reasonable, within five days after service, or within a shorter time, which, in case of particular and imminent danger to the public health the local board may designate, such local board or other agency of such city may enter upon any such property and remove and destroy any weeds, plants and growths noxious or detrimental to the public health.

4. The provisions of sections thirty-one and thirty-two of this chapter shall apply respecting the expense of such removal, destruction or abatement, except where a different method of collecting such expense is otherwise provided by law for and in respect to any city, then and in that event the provisions of such law in connection therewith shall apply in the case of such city.

5. The provisions of this section shall not operate to deprive the local legislative body of any city of the power to enact local laws in relation to any matter in respect to which such power would otherwise exist, nor shall it limit such power. If this power otherwise exists, any provision of this section may be superseded, supplemented or amended by local law in the same manner and to the same extent as such provisions could be superseded, supplemented or amended had this section not been enacted. (Added by L. 1943, ch. 398.)

§ 39. Certain kinds of business and manufacture prohibited in cities or within three miles therefrom; exceptions.* It shall not be lawful for any person or persons to engage in or carry on the business of fat rendering, bone boiling or the manufacture of fertilizers or any business as a public nuisance within the corporate limits of any incorporated city of this state, or within a distance of three miles from the corporate limits of any incorporated city, provided, however, that nothing herein contained shall prevent the rendering of fresh killed cattle or swine. All departments of health or the commissioner or commissioners thereof in any incorporated city of this state shall have power to enforce the provisions of this section. Any person or persons offending against the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor. This section shall not apply to the counties of Fulton, Wayne, Tompkins, Chautauqua, Orange, Dutchess, Erie, Monroe, Oneida, Onondaga, New York, Schoharie, Ulster, Greene, Cayuga, Cattaraugus, Niagara, Saratoga, Schenectady, Hamilton, Montgomery and Orleans.

* See Town Law, § 180.

§ 40. **Health and welfare services to all children.** The local board of health or other health authority of each city, town, and village and the county board of health or other health authority of a county, shall provide children who attend schools other than public with all or any of the health and welfare services and facilities, including but not limited to health, surgical, medical, dental and therapeutic care and treatment, and corrective aids and appliances, authorized by law and now granted or hereafter made available by such health board or authority for or to children in the public schools in so far as these services and facilities may be requested by the authorities of the schools other than public. Any such services or facilities shall be so provided notwithstanding any provision of any charter or other provision of law inconsistent herewith. (Added by L. 1939, ch. 731; amended by L. 1941, ch. 936.)

ARTICLE IV

Adulterations

(§§ 40-50 repealed by L. 1922, chs. 48 and 335. See Agriculture and Markets Law.)

ARTICLE V

Potable waters*

- Section 70. Rules and regulations of department.
71. Inspection of water.
 72. Rules and regulations for water supplies legalized.
 73. Sewage.
 - 73-a. [Limitations on sanitary control.]
 74. Discharge of sewage into Wallkill creek prohibited.
 75. Discharge of sewage into the Susquehanna near Binghamton prohibited.
 76. Discharge of sewage and other matter into certain waters prohibited.
 - 76-a. Order to discontinue pollution of waters.
 77. Permission to discharge sewage.
 78. Permission to discharge refuse or waste matter from industrial establishments.
 79. Plans for refuse discharge pipes must be submitted.
 80. Revocation of permit.
 81. Reports of municipal authorities to local boards of health.
 82. Reports of proprietors of industrial establishments.
 83. Record of permits; inspection of local boards of health.
 84. Violations; service of notice; actions.
 85. Penalties.
 86. Constructions and limitations made by sections seventy-six to eighty-five, inclusive.
 87. Actions by municipalities to prevent discharge of sewage into waters.
 88. Orders by commissioner of health to protect water supplies.
 89. Water and sewerage service for realty subdivisions.

§ 70. **Rules and regulations of department.**† The state department of health

* See § 21-a, also Conservation, General City, General Municipal, Navigation, Penal, Transportation Corporations, Town and Village Laws, and McKinney's Unconsolidated Laws, §§ 6121-6143, relating to waterworks operated jointly.

† See Sanitary Code.

may make rules and regulations for the protection from contamination of any or all public supplies of potable waters and water supplies of state or United States, institutions, parks, reservations or posts and their sources within the state, and the commissioner of water supply, gas and electricity of the city of New York and the board of water supply of the city of New York may make such rules and regulations subject to the approval of the state department of health for the protection from contamination of any or all public supplies of potable waters and their sources within the state where the same constitute a part of the source of the public water supply of said city. If any such rule or regulation relates to a temporary source or act of contamination, any person violating such rule or regulation shall be liable to prosecution for misdemeanor for every such violation, and on conviction shall be punished by a fine not exceeding two hundred dollars, or imprisonment not exceeding one year, or both. If any such rule or regulation relates to a permanent source or act of contamination, said department may impose penalties for the violation thereof or the noncompliance therewith, not exceeding two hundred dollars for every such violation or noncompliance. Every such rule or regulation shall be published at least once in each week for two consecutive weeks, in at least one newspaper of the county where the waters to which it relates are located. The cost of such publication shall be paid by the corporation, municipality, state or United States or state or United States institution, park, reservation or post benefited by the protection of the water supply to which the rule or regulation published relates. The affidavit of the printer, publisher or proprietor of the newspaper in which such rule or regulation is published must be filed, together with the rule or regulation published, in the county clerk's office of such county, and such affidavit and rule and regulation shall be conclusive evidence of such publication, and of all the facts therein stated in all courts and places. (Amended by L. 1911, ch. 695, L. 1915, ch. 665, L. 1926, ch. 309, and L. 1933, ch. 391.)

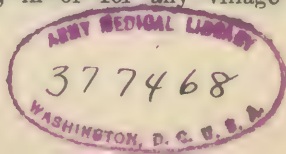
§ 71. **Inspection of water.** The person, officer, board or commission having the management and control of the potable water supply of any municipality, state or United States institution, park, reservation or post, and in the city of New York, the commissioner of water supply, gas and electricity, and the board of water supply of the city of New York, or the corporation furnishing such supply, may make such inspection of the sources of such water supply as such person, officer, board, corporation or commission deems advisable and to ascertain whether the rules or regulations of the state department of health, and of the commissioner of water supply, gas and electricity of the city of New York, and of the board of water supply of the city of New York, are complied with, and shall make such regular or special inspections as the state commissioner of health, or the commissioner of the department of water supply, gas and electricity of the city of New York, or the board of water supply of the city of New York, may prescribe, and the authorities in charge of the water supply or their duly authorized representatives may without fee or hindrance, enter, examine and survey all grounds, structures, buildings and places on the watershed tributary to the sources of such water supply in order to ascertain whether such rules or regulations are complied with. If any such inspection discloses a violation of any such rule or regulation relating to a temporary or permanent source or act of contamination, such person, officer, board, corporation or commission shall cause a copy of the rule or regulation violated to be served upon the person violating the same, with a notice of such violation. If the person served does not immediately comply with the rule or regulation violated, such person, officers, board, corporation or commission, except in a case concerning the violation of a rule or regulation relating to a temporary or permanent source or act of contamination affecting the potable water supply of the city

of New York, shall notify the state department of health of the violation, which shall immediately examine into such violation; and if such person is found by the state department of health to have actually violated such rule or regulation, the commissioner of health shall order the local board of health of such municipality wherein the violation or noncompliance occurs, to convene and enforce obedience to such rule or regulation. If the local board fails to enforce such order within ten days after its receipt, the corporation furnishing such water supply or the municipality, state or United States or state or United States institution, park, reservation or post deriving its water supply from the waters to which such rule or regulation relates, or the state commissioner of health, or the local board of health of the municipality wherein the water supply protected by these rules is used, or any person interested in the protection of the purity of the water supply, may maintain an action in a court of record which shall be tried in the county where the cause of action arose against such person, for the recovery of the penalties incurred by such violation, and for an injunction restraining him from the continued violation of such rule or regulation. If the person served does not comply within five days with the rule or regulation violated, in case such rule or regulation relates to a temporary or permanent source or act of contamination affecting the potable water supply of the city of New York, the commissioner of water supply, gas and electricity of said city, or the board of water supply of the city of New York, may summarily enforce compliance with such rule or regulation and may summarily abate or remove the cause of the violation of such rule or regulation or the nuisance so created, and to that end may employ such force as may be necessary and proper; provided, however, that no building or improvement shall be removed, disturbed or destroyed by the said commissioner of water supply or the said board of water supply until he or they shall cause measurements to be made of the buildings and photographs of the exterior views thereof, which measurements and photographs shall be at the disposition thereafter of the owners or their attorneys, and failure to exercise such right of abatement shall not be deemed a waiver thereof. Failure to comply within five days with such rule or regulation shall further entitle the city of New York to maintain an action in any court having jurisdiction thereof for the recovery of the penalties incurred by such violation and for an injunction restraining the person or persons violating such rule or regulation, or creating or continuing such nuisance, from the continued violation of such rule or regulation or continuance of such nuisance; the remedy by abatement being not exclusive. (Amended by L. 1911, ch. 695, L. 1915, ch. 665, L. 1926, ch. 309, and L. 1927, ch. 602.)

§ 72. Rules and regulations for water supplies legalized. All rules and regulations heretofore duly made and published for the sanitary protection of public water supplies, pursuant to chapter five hundred and forty-three of the laws of eighteen hundred and eighty-five, and chapter six hundred and sixty-one of the laws of eighteen hundred and ninety-three, as amended, are hereby legalized, ratified, confirmed and continued in force, until new rules and regulations become operative.

This section and the two preceding sections shall not be construed to repeal or affect any of the provisions of chapter three hundred and seventy-eight of the laws of eighteen hundred and ninety-seven, or its amendments.

§ 73. Sewage. When the state department of health, or the commissioner of water supply, gas and electricity of the city of New York, or the board of water supply of the city of New York, shall, for the protection of a water supply from contamination, make orders or regulations the execution of which will require or make necessary the construction and maintenance of any system of sewerage, or a change thereof, in or for any village or



hamlet, whether incorporated or unincorporated, or the execution of which will require the providing of some public means of removal or purification of sewage, the municipality, corporation, state or United States or state or United States institution, park, reservation or post owning the waterworks benefited thereby shall, at its own expense, construct and maintain such system of sewerage, or change thereof, and provide and maintain such means of removal and purification of sewage and such works or means of sewage disposal as shall be approved by the state department of health, and for that purpose said municipality, corporation, state or United States or state or United States institution, park, reservation or post, may acquire, by condemnation the necessary real estate or interest therein or the easement or use thereof whether now used for public or private purposes. When the execution of any such regulations of the state department of health, or the commissioner of water supply, gas and electricity of the city of New York, or the board of water supply of the city of New York will occasion or require the removal of any building or buildings, the municipality, corporation, state or state institution, park, reservation or post owning the waterworks benefited thereby shall, at its own expense, remove such buildings and pay to the owner thereof all damages occasioned by such removal. When the execution of any such regulation will injuriously affect any property the municipality, corporation, state or state institution, park, reservation or post owning the waterworks benefited thereby shall make just and adequate compensation for the property so taken or injured and for all injuries caused to the legitimate use or operation of such property. Until such construction or change of such system or systems of sewerage, and the providing of such means of removal or purification of sewage, and until such works or means of sewage disposal and the removal of any buildings are so made by the municipality, corporation, state or state institution, park, reservation or post owning the waterworks to be benefited thereby at its own expense, and until, except in the case of a municipality, state or state institution, park, reservation or post, the corporation owning the waterworks benefited shall make just and adequate payment for all injuries to property and for all injuries caused to the legitimate use or operation of such property, there shall be no action or proceeding taken by any such municipality, officer, board, person, commission or corporation against any person or corporation for the violation of any regulation of the state department of health under this article, and no person or corporation shall be considered to have violated or refused to obey any such rule or regulation. The owner of any building the removal of which is occasioned or required, or which has been removed by any rule or regulation of the state department of health, or the commissioner of water supply, gas and electricity of the city of New York, or the board of water supply of the city of New York, made under the provisions of this article, and all persons whose rights of property are injuriously affected by the enforcement of any such rule or regulation, shall have a cause of action against the municipality, corporation, and shall have the right to present a claim against and to the state or state institution, park, reservation or post owning the waterworks benefited by the enforcement of such rule or regulation, for all damages occasioned or sustained by such removal or enforcement, including all injuries caused to the legitimate use or operation of such property, and an action therefor may be brought against such municipality or corporation in any court of record in the county in which the premises or property affected is situated and shall be tried therein; or such damage may be determined by a special proceeding in the supreme court or the county court of the county in which the property is situated. Such special proceedings shall be commenced by petition and notice to be served by such owner upon the municipality or corporation in the same manner as for the

commencement of condemnation proceedings. Such municipality or corporation may make and serve an answer to such petition as in condemnation proceedings. The petition and answer shall set forth the claims of the respective parties and the provisions of the condemnation law shall be applicable to the subsequent proceedings upon the petition and answer, if any. Either party may, before the service of the petition or answer respectively, offer to take or pay a certain sum, and no costs shall be awarded against either party unless the judgment is more unfavorable to him than his offer. Provided, however, that in the case of a summary abatement by a municipality as hereinbefore provided, no costs shall be awarded against the owner of the property damaged, and the commissioners of appraisal in their report shall recommend such additional sum as may in their judgment be reasonable as compensation for witnesses and other necessary expenses of claimant. Such municipality shall, within three calendar months after the confirmation of the report of the commissioners of appraisal, pay to the respective owners and bodies politic or corporate, mentioned or referred to in said report, in whose favor any sum or sums of money shall be estimated and reported by said commissioners, the respective sum or sums so estimated and reported in their favor respectively, with lawful interest thereon. And in case of neglect or default in the payment of the same within the time aforesaid, the respective person or persons or bodies politic or corporate in whose favor the same shall be so reported, his, her, or their executors, administrators, successors, or assigns, at any time or times, after application first made by him, her, or them to such municipality for payment thereof, may sue for and recover the same, with lawful interest as aforesaid, and the costs of suit in any proper form of action against such municipality in any court having cognizance thereof, and it shall be sufficient to declare generally for so much money due to the plaintiff or plaintiffs therein by virtue of this act, and the report of said commissioners, with proof of the right and title of the plaintiff or plaintiffs to the sum or sums demanded shall be conclusive evidence in such suit or action. (Amended by L. 1911, ch. 695, L. 1915, ch. 665, L. 1921, ch. 510, L. 1926, ch. 309, and L. 1928, ch. 395.)

§ 73-a. [Limitations on sanitary control.]† Nothing contained in this chapter shall extend the sanitary control of the board of water supply of the city of New York, beyond the sources of potable water supply, tributary to the Catskill aqueduct; and the powers granted by this chapter to the board of water supply of the city of New York shall cease at the time of the transference of the jurisdiction over the source of water supply, by the board of water supply to the commissioner of water supply, gas and electricity of the city of New York; and at no time shall the commissioner of water supply, gas and electricity of the city of New York and the board of water supply of said city have or exercise concurrent powers or sanitary control over the sources of potable water supply tributary to the Catskill aqueduct. (Added by L. 1915, ch. 665.)

§ 74. Discharge of sewage into Wallkill creek prohibited. No person or corporation shall permit the discharge or escape of any sewage, or other matter deleterious to public health, or destructive to fish, or throw or cast any dead animal, carrion or offal, or other putrid or offensive matter into the waters of the Wallkill creek, in the counties of Ulster and Orange. Any person violating any provision of this section shall forfeit to the county where the violation occurred the sum of fifty dollars for every such violation.

§ 75. Discharge of sewage into the Susquehanna near Binghamton prohibited. No person or corporation shall cause to fall, flow or discharge into the

† Section heading inserted by editor.

Susquehanna river or any of its tributaries, between the Rock Bottom dam in such river at the city of Binghamton, and a point one mile east of the bridge that crosses such river at Conklin, any sewage matter, or other foul, noxious or deleterious, solid or liquid matter, or any matter that may be declared such by the board of health of any municipality adjacent to such river within such limit. The board of health of any such municipality shall examine into any alleged offense against this section and cause the same to be abated, if found to exist. Every person violating any provision of this section shall forfeit to the municipality having a local board of health where the violation occurs the sum of twenty-five dollars for the first day when the violation takes place, and the sum of ten dollars for every subsequent day that such violation is repeated or continued.

§ 76. **Discharge of sewage and other matter into certain waters prohibited.*** No person, corporation or municipality, shall place or cause to be placed, or discharge or cause to be discharged into any of the waters of this state, in quantities injurious to the public health, any sewage, garbage, offal, or any decomposable or putrescible matter of any kind or the effluent from any sewage disposal plant, or any substance, chemical or otherwise, or any refuse or waste matter, either solid or liquid, from any sewer or drainage system or from any shop, factory, mill or industrial establishment; unless express permission to do so shall have been first given in writing by the state commissioner of health as provided in this article, except as hereinafter provided. But this section shall not prevent the discharge of sewage from any public sewer system owned and maintained by a municipality until an order prohibiting same shall be made as hereinafter provided, or the discharge of refuse or waste matter from any shop, factory, mill or industrial establishment, if such sewer system was in operation and was discharging sewage, or such shop, factory, mill or industrial establishment was in operation and discharging refuse or waste matter, into any of the waters of this state on or prior to May seventh, nineteen hundred and three, and such municipality or the proprietor of such shop, factory, mill or industrial establishment secured exemption from this section by filing a report with the state commissioner of health in accordance with law, nor to any extension or modification of such shop, factory, mill or industrial establishment, or reconstruction thereof, provided the refuse or waste matter discharged therefrom is not materially changed or increased; but this exception shall not permit any increase in the discharge of such sewage, or in the discharge of refuse or waste matter from any shop, factory, mill or industrial establishment, nor shall it permit the discharge of sewage from a sewer system which shall be extended, modified or reconstructed subsequent to said date. (Amended by L. 1911, ch. 553.)

§ 76-a. **Order to discontinue pollution of waters.** Whenever the state commissioner of health shall determine upon investigation that sewage from any city, village, town, building, steamboat or other vessel, or property, or any garbage, offal or any decomposable or putrescible matter of any kind is being discharged into any of the waters of the state, which shall include all streams and springs and all bodies of surface and ground water, whether natural or artificial, within or upon the boundaries of the state, and when, in the opinion of the state commissioner of health, such discharge is polluting such waters in a manner injurious to or so as to create a menace to health, or so as to create a public nuisance, he may order the municipality, corporation or person so discharging sewage, refuse or other matter, to show cause before him why such discharge should not be discontinued. A

* Conservation Law, § 213, provides no factory refuse or other deleterious or poisonous substance shall be thrown or allowed to run into any waters in quantities injurious to fish.

notice shall be served on the municipality, corporation or person so discharging sewage, refuse or other matter, directing such municipality, corporation or person to show cause before the said state commissioner of health on a date specified in such notice why an order should not be made directing the discontinuance of such discharge. Such notice shall specify the time when and place where a public hearing will be held by the state commissioner of health and notice of such hearing shall be published at least twice in a newspaper of the city, village, town or county where such discharge occurs, and shall be served personally or by mail at least fifteen days before said hearing and in the case of a municipality or a corporation such service shall be upon an officer thereof. The state commissioner of health shall take evidence in regard to said matter and he may issue an order to the municipality, corporation or person responsible for such discharge, directing that within a specified period of time thereafter such discharge be discontinued, and such proper method of treatment or disposal of such sewage, refuse or waste matter be installed as shall be approved by the state department of health. Such order shall not be valid until approved by the governor and the attorney-general, and when so approved it shall be the duty of the attorney-general to enforce such order. Such means or method for the treatment or disposal of sewage, refuse or other matter must be executed, completed and put in operation within the time fixed in the order. The state commissioner of health shall have authority to require from the officials and persons responsible for the execution of such orders satisfactory evidence at specified times of proper progress in the execution of such orders, and may stipulate and require that certain definite progress shall be made at certain definite times prior to the final date fixed in the order. For the purposes of this article sewage shall be defined as any substance, solid or liquid that contains any of the waste products or excrementitious or other wastes or washings from the bodies of human beings or animals. But this section shall not apply to refuse or waste matter from any shop, factory, mill or industrial establishment not containing sewage as hereinbefore defined. (Added by L. 1911, ch. 553; amended by L. 1921, ch. 510, and L. 1928, ch. 395.)

§ 77. **Permission to discharge sewage.** Upon application duly made to the state commissioner of health by the public authorities having by law the charge of the sewer system of any municipality, the state commissioner of health shall have power to consider the case of a sewer system otherwise prohibited by section seventy-six from discharging sewage into any of the waters of the state, and whenever in his opinion the general interests of the public health would not be endangered thereby he may issue a permit for the discharge of sewage from any such sewer system into any of the waters of the state, and may stipulate in the permit, modification, regulations and conditions on which such discharge may be permitted. Such application must be made in a form required by the state commissioner of health. The plans for the construction of any sewer system or sewage disposal plant for the extension, reconstruction or modification of sewers, sewer systems or sewage disposal plants the permit for the discharge from which is requested from the state commissioner of health as provided in this section shall be submitted to and approved by the state department of health before such permit becomes effective.† Such permit before being operative shall be recorded in the county clerk's office of the county wherein the outlet of the said sewer system is located, and a copy of the permit shall be transmitted by the state commissioner of health to the board of health of

† See Village Law, § 260; Town Law, § 192; General Municipal Law, § 120-n; L. 1936, ch. 879, § 1207 (Nassau County Law); L. 1933, ch. 568, § 8 (Onondaga County Sanitary Sewer and Public Works Act); L. 1928, ch. 219, § 4-a (Westchester County Sanitary Sewer Act); McKinney's Unconsolidated Laws, § 6056.

See 2nd Class Cities Law, § 150—approval by local health officer.

the municipality wherein the outlet of said sewer system is located. (Amended by L. 1911, ch. 553, L. 1921, ch. 510, and L. 1928, ch. 395.)

§ 78. **Permission to discharge refuse or waste matter from industrial establishments.** Upon application duly made to the state commissioner of health by the proprietor, lessee or tenant of any shop, factory, mill or industrial establishment from which the discharge of refuse or waste matter into any of the waters of the state is otherwise prohibited by section seventy-six, the state commissioner of health shall have power to consider the case of the said shop, factory, mill or industrial establishment, and whenever the public health and purity of the waters shall warrant it, he shall issue a permit for the discharge of refuse or waste matter from such shop, factory, mill or industrial establishment into any of the waters of the state, and may stipulate in the permit such modification, regulations and conditions as the public health may require. Such permit before being operative shall be recorded in the county clerk's office of the county where such shop, factory, mill or industrial establishment is located and a copy of such permit shall be transmitted by the state commissioner of health to the board of health of the municipality wherein the outlet discharging refuse or waste matter from such shop, factory, mill or industrial establishment shall be located.

§ 79. **Plans for refuse discharge pipes must be submitted.** Before any conduit or discharge pipe, or other means of discharging or casting any refuse or waste matter from any shop, factory, mill or industrial establishment not constructed or in process of construction on May seventh, nineteen hundred and three, shall be put in or constructed for the purpose of discharging any refuse or waste matter therefrom into any waters in this state, a statement of the purpose for which the same is to be used shall be submitted to the commissioner. If the same is not detrimental to the public health he shall issue a permit therefor to the applicant. Before such permit becomes effective the plan or plans for any such conduit or discharge pipe or other means of discharging or casting any refuse or waste matter shall be submitted to and approved by the state department of health. No such conduit, discharge pipe or other means of discharging or casting any refuse or waste matter from any such shop, factory, mill or establishment into any of the waters of this state shall be put in or constructed before such permit is granted, and if put in or constructed, the person putting in or constructing or maintaining the same shall forfeit to the people of the state five dollars a day for each day the same is used or maintained for such purpose, to be collected in an action brought by the commissioner. He may also maintain an action in the name of the people to restrain a violation of this section. (Amended by L. 1921, ch. 510, and L. 1928, ch. 395.)

§ 80. **Revocation of permit.** Every such permit for the discharge of sewage from a sewer system or for the discharge of refuse or waste matter from a shop, factory, mill or industrial establishment, shall when necessary to conserve the public health, be revocable or subject to modification or change by the state commissioner of health on due notice after an investigation and hearing and an opportunity for all interested therein to be heard thereon being served on the public authorities of the municipality owning and maintaining the sewer system, or on the proprietor, lessee or tenant of the shop, factory, mill or industrial establishment. Plans for any such modification shall be submitted to and approved by the state department of health. The length of the time after receipt of the notice within which the discharge of sewage or of refuse or waste matter shall be discontinued may be stated in the permit, but in no case shall it exceed two years in the case of a sewer system, or one year in the case of a shop, factory, mill or industrial estab-

lishment, and if the length of time is not specified in the permit, it shall be one year in the case of a sewer system and six months in the case of a shop, factory, mill or industrial establishment. On the expiration of the period of time prescribed after the service of a notice of revocation, modification or change from the state commissioner of health, the right to discharge sewage or refuse or waste matter into any of the waters of the state shall cease and terminate and the prohibition of section seventy-six of this article against such discharge shall be in full force as though no permit had been granted, but a new permit may thereafter again be granted as hereinbefore provided. (Amended by L. 1921, ch. 510, and L. 1928, ch. 395.)

§ 81. **Reports of municipal authorities to local boards of health.** The report of the public authorities having by law charge of the sewer system of every municipality in the state, from which sewer system sewage was being discharged into any of the waters of the state on May seventh, nineteen hundred and three, transmitted by the board of health of the municipality within which any sewer outlet of the said sewer system is located to the state commissioner of health and filed by him in his office, shall constitute the evidence of exemption from the prohibition of section seventy-six of this article. No sewer system shall be exempt from the prohibition of said section against the discharge of sewage into the waters of the state for which a satisfactory report shall not have been filed in the office of the state commissioner of health in accordance with laws of nineteen hundred and three, chapter four hundred and sixty-eight.

§ 82. **Reports of proprietors of industrial establishments.** The report of the proprietor of every shop, factory, mill and industrial establishment in the state, from which refuse or waste matter was being discharged into any of the waters of the state on May seventh, nineteen hundred and three, filed in the office of the state commissioner of health shall constitute the evidence of exemption of the shop, factory, mill or industrial establishment from the prohibition of section seventy-six of this article. No shop, factory, mill or industrial establishment shall be exempt from the prohibition of said section against the discharge of refuse or waste matter into the waters of the state, for which a report shall not have been made in accordance with laws of nineteen hundred and three, chapter four hundred and sixty-eight.

§ 83. **Record of permits; inspection of local boards of health.** Each board of health shall preserve in its office and in a form to be prescribed by the state commissioner of health, a permanent record of each permit issued by the state commissioner of health granting the right to discharge sewage or refuse or waste matter into any of the waters of the state within that municipality and of each revocation of a permit; and also a permanent record of each report received by the board of health concerning each sewer system and each shop, factory, mill or industrial establishment which on May seventh, nineteen hundred and three, was discharging sewage or refuse or waste matter into any of the waters of the state within that municipality. Each local board of health shall make and maintain such inspection as will, at all times, enable it to determine whether section seventy-six of this article is being complied with in respect to the discharge of sewage, refuse or waste matter or other materials prohibited by said section, into any of the waters of the state within that municipality. For the purpose of such inspection every member of such board of health, or its health officer, or any person duly authorized by it, shall have the right to make all necessary examinations of any premises, building, shop, factory, mill, industrial establishment, process or sewer system.

§ 84. **Violations; service of notice; actions.** The local board of health of each municipality shall promptly ascertain every violation of, or noncompli-

ance with, any of the provisions of section seventy-six of this article or of the permits for the discharge of sewage or refuse or waste material into any of the waters of the state herein provided, which may occur within that municipality, or the state commissioner of health may ascertain such violations or noncompliance. The local board of health shall on the discovery of every violation of or noncompliance with any of the provisions of said section or of any permit duly issued, report the same in writing to the said commissioner of health. Upon such report from a local board of health or upon ascertaining such violation or noncompliance, the state commissioner shall at once give a hearing to and take the proof of persons charged with such violation or noncompliance and investigate the matter, and if he finds a violation or noncompliance to exist he may bring an action in the name of the people of the state in a court of record against the person or corporation responsible for the violation or noncompliance, for the recovery of the penalties incurred and for an injunction against the continuation of the violation or noncompliance. (Amended by L. 1911, ch. 553.)

§ 85. Penalties. The penalty for the discharge of sewage from any public sewer system into any of the waters of the state without a duly issued permit for which a permit is required by this article shall be five hundred dollars, and a further penalty of fifty dollars per day for each day the offense is maintained. The penalty for the discharge of sewage from any public sewer system into any of the waters of the state without filing a report for which a report is required to be filed with the board of health of the municipality shall be fifty dollars. The penalty for the discharge of refuse or waste matter from any shop, factory, mill or industrial establishment for which a permit is required by this article, without such permit shall be one hundred dollars and ten dollars per day for each day the offense is maintained. The penalty for the discharge of refuse or waste matter from any shop, mill, factory or industrial establishment, without filing a report where a report is required by this article to be filed shall be twenty-five dollars and five dollars per day for each day the offense is maintained. The penalty for discharging into any of the waters of the state any other matter prohibited by section seventy-six of this article besides that specified above, shall be twenty-five dollars and five dollars per day for each day the offense is maintained.

§ 86. Constructions and limitations made by sections seventy-six to eighty-five, inclusive. Nothing in sections seventy-six to eighty-five inclusive shall be construed to diminish or otherwise to modify the common law rights of riparian owners in the quality of waters of streams covered by such rights, nor in the case of actions brought against the pollution of waters to limit their remedy to indemnities.

§ 87. Actions by municipalities to prevent discharge of sewage into waters. Any incorporated city or village in the state of New York, which has made such provision for the disposal of its sewage as not to pollute or contaminate therewith any river, stream, lake or other body of water, may have and maintain an action in the supreme court to prevent the discharge of any sewage or substance deleterious to health, or which shall injure the potable qualities of the water in any river, stream, lake or other body of water, from which such incorporated city or village shall take or receive its water supply, provided, that such river, stream, lake or other body of water is wholly, or in part, within the boundaries of the county in which such plaintiff is located. Whenever such action shall be brought under the provisions of this section, it shall be the duty of the supreme court upon proof of the existence of facts justifying the bringing and maintenance of such action under the provisions of this section to render a judgment in which

shall be incorporated a mandatory injunction requiring the person, body, board, corporation, municipality, village, county or town, being a defendant to said action which directly or indirectly, or by its servants, agents or officers shall discharge or dispose of its sewage, or any other substance deleterious to health or which shall injure the potable qualities of the water in such wise as that the same shall enter into any river, stream, lake or other body of water, from which such plaintiff shall take or receive its water supply, within such reasonable time as may be prescribed by the court, to take such action as shall prevent such discharge or the disposal of such sewage or other substance into such waters, or the pollution thereof, with such further directions in the premises as may be proper and desirable to effect such purpose, provided that such river, stream, lake or other body of water is wholly, or in part, within the boundaries of the county in which such plaintiff is located. But no such action shall be brought as provided for in this section until the state department of health has examined and determined whether the sewage does pollute or contaminate the river, stream, lake or other body of water into which said sewage is discharged. The expense of such examination by said department shall be a charge upon and paid by the municipality in whose interest and on whose behalf such examination is made. In case the state department of health shall find upon examination that the discharge of said sewage does pollute or contaminate said waters or any of them in such manner as to be a menace or danger to the health of those using said waters the plans for the removal or disposal of the sewage ordered to be prepared by the court as provided in this section shall be submitted to the state department of health for its approval. (Amended by L. 1921, ch. 510, and L. 1928, ch. 395.)

§ 88. **Orders by commissioner of health to protect water supplies.** When the state commissioner of health, after investigation of the condition of any public water supply used for drinking or other domestic purposes, whether maintained and operated by a municipality, water district or private corporation, company or individual, shall certify to the board, corporation, company, officer or person in charge of the maintenance and operation of such water supply that in his opinion such water supply is so polluted or subject to dangerous pollution or so inadequate or of such objectionable physical quality as to constitute a menace to the public health and shall order reasonable improvements to be made for the protection of public health and such municipality, water district or private corporation, company or individual maintaining and operating such water supply shall fail to carry out such order forthwith, any court of competent jurisdiction may, upon the application of the state commissioner of health, enforce prompt compliance with such order. Service of the certificate by the state commissioner of health as aforesaid shall be made upon the mayor or corporation counsel of the municipality or upon an officer of the water district or private corporation or company as the case may be. (Added by L. 1927, ch. 254; amended by L. 1929, ch. 374, and L. 1935, ch. 144.)

§ 89. **Water and sewerage service for realty subdivisions.** Before land platted for subdivision is put upon the market by any corporation, company, persons or person, and before any permanent building is erected thereon, there shall be filed with the state commissioner of health a plat of such subdivision, together with a statement as to the methods proposed for supplying the subdivision with water and sewerage service, and such other information as may be required by the commissioner. The commissioner may thereupon order the preparation and submission of such plans and specifications, within a specified time, as he may deem necessary for furnishing adequate water supply and sewerage service to said subdivision; and he may at any time order the installation, within a specified period, in accordance with the plans

presented or approved revisions thereof, of the whole or any part of the water supply and sewerage systems for said subdivision as the public health may, in his judgment, require; provided that nothing herein contained shall be construed to delegate the general powers of the water power and control commission nor to impair nor to deprive such commission of its powers and functions as now provided by law. No county clerk or register shall file or record or accept for filing or recording any map or plat showing a subdivision of land in any town or village unless there is endorsed thereon or annexed thereto a certificate of the state commissioner of health approving the water supply and sewerage systems proposed or installed for such subdivision and consenting to the filing thereof. But this section shall not apply to any subdivision of property upon which dwellings for less than ten families may be constructed nor in any city nor in any county which maintains a county department of health that has adopted regulations for the control of such developments. (Added by L. 1933, ch. 403; amended by L. 1938, ch. 260, and L. 1939, ch. 97.)

ARTICLE V-A*

Joint disposal of sewage

(Added by L. 1932, ch. 132)

- Section 90. Territory included in sanitary district.
- 91. Petition for election.
- 92. Action on petition.
- 93. Election.
- 94. Appointment of commission, organization, employees.
- 95. Commission, organization, employees.
- 96. Duties of commission.
- 97. Petition for bond issues.
- 98. Obligations: disposition of proceeds; payment.
- 99. Tax assessments.
- 99-a. Acquiring property, rights of way.
- 99-b. Passing rules and regulations.
- 99-c. Partial invalidity of article.

§ 90. **Territory included in sanitary district.** Whenever contiguous territory containing one or more centers of population regardless of form of incorporation or lack of incorporation shall be so situated that the construction of a joint outlet sewer and a plant or plants for the treatment of sewage will be conducive to the preservation of the public health, this territory may be incorporated as a sanitary district. It is provided, however, that no territory located more than three miles from the limits of a city or incorporated village or from the center of an unincorporated village having a population of five hundred or more can be included in such a district.

§ 91. **Petition for election.** One hundred or more legal voters resident of the proposed sanitary district may petition a justice of the supreme court of the judicial district in which the proposed sanitary district or a major portion thereof is located to submit the proposition of organizing a sanitary district to a vote of the electors residing in that district. The petition shall contain a description of the proposed district and shall be accompanied by a map drawn to scale showing the boundaries of the proposed sanitary district together with the limits of any incorporated cities or villages and the centers of population of any unincorporated villages which are included in said district. The execution of the petition by an elector shall be acknowl-

* Formerly Sanitary District Law, L. 1927, ch. 303.

edged by him or it may be proved by the oath of a witness who shall swear that he knows the electors and that the petition was signed by the electors in the presence of the witness.

§ 92. **Action on petition.** Upon the receipt of such a petition the supreme court justice shall set a date for a public hearing thereon. The hearing shall be held within sixty days after the receipt of the petition and shall be advertised by posting a notice in four of the most public places within the proposed district at least twenty-one days prior thereto and by publishing a notice in a newspaper published within the proposed district or having a general circulation therein, once in each of the three weeks immediately preceding the week in which the hearing is to be held. All interested persons, officials, residents, voters, taxpayers, property owners or other persons or corporations in any way affected by the granting of said petition shall be heard on any questions dealing with the location of the boundaries of the district. No question dealing with the advisability of forming the district are to be heard at this time. Following the public hearings, the justice shall fix the boundaries of the district as proposed or modify the boundaries as will best serve the public need.

§ 93. **Election.** The justice shall then call an election within sixty days following the date of the hearing at which the question shall be submitted to the voters residing within the boundaries of the proposed sanitary district as fixed by the justice as to whether the district shall be incorporated or not. The election shall be advertised in the same manner as herein required for advertising the public hearing. The proposition shall be submitted substantially in the following form:

For the sanitary district.

Against the sanitary district.

A majority of the votes cast shall decide the matter. The election shall be managed and the vote canvassed in the same manner as in an election to fill a county office. If the territory included in the district is in more than one county, the returns shall be made and certified to the justice by the responsible county authorities and he shall compile the vote. If the majority are in favor of incorporating the sanitary district the justice shall within thirty days following the date of the election, issue a determination to that effect which shall contain a description of the sanitary district and he shall file a certified copy of said determination with the county clerk in each county of which the whole or portions may be included within said sanitary district.

§ 94. **Appointment of commission, organization, employees.** Within thirty days following the date of the election, the justice shall also appoint three commissioners to administer the affairs of the sanitary district and to be known as the sanitary district commission. The said commissioners shall be vested with the management of the affairs of the sanitary district. Each commissioner shall be a legal voter and taxpayer, resident of the sanitary district and shall subscribe to an oath to serve the district. It is provided, however, that not more than two commissioners shall be residents of any one city, incorporated village or unincorporated community if more than one city, incorporated village or unincorporated community is included in the district. The first three commissioners shall be appointed for one, two and three year terms respectively beginning with the date of appointment and thereafter one commissioner shall be appointed each year to serve a three year term. A vacancy occurring in the office of a commissioner shall be filled by appointment for the unexpired term.

§ 95. **Commission, organization, employees.** The commissioners shall elect a chairman and vice-chairman from among their own members and a secretary, who need not be a commissioner. The commissioners may employ and at pleasure discharge such engineering, professional and other assistants as may be needed and incur such other expenses as may be found necessary within the amounts available therefor by annual budget appropriations. The commissioners shall receive no compensation for their services but such commissioners and employees of the commission shall be paid their actual and necessary expenses in the performance of their official duties. Such commissioners may adopt a seal for the commission and two of the commissioners shall constitute a quorum for the transaction of business.

§ 96. **Duties of commission.** The sanitary district commission is hereby authorized and directed to prepare maps, plans, specifications, estimates for any structure or structures required to provide for the safe disposal of the sewage of the sanitary district and to let contracts for, supervise the construction and maintenance or the enlarging or remodeling of such structures and to carry on such other activities as may be required by this article or considered necessary to perform the duties in this article prescribed. It is intended that the commissioners construct and maintain main sewers and sewage treatment works in order to provide a satisfactory outlet for any municipal subdivision which may, at any future time, connect sub-main and lateral sewers to it. It is provided, however, that said commissioners may undertake the construction of sub-mains or laterals as agents for cities, towns or villages when officially requested so to act and when the cost of such work is to be borne by local assessments against the property benefited.

§ 97. **Petition for bond issues.** The sanitary district commission may from time to time petition the finance board, as that term is defined in subdivision four of section two of the local finance law, or the several finance boards where the whole or parts of more than one county are included in the sanitary district, to issue obligations in amounts to be set forth in said petition, to pay for the construction of all or any part of a sewerage system to serve the district. In the event that more than one county is included in the district, the commission is authorized to apportion the amount to be raised by each county as nearly as may be in proportion to the benefits which property in each county will derive therefrom. Before fixing and determining said apportionment of the issue of obligations, the commission shall advertise and hold a public hearing, at which the finance boards of the various counties, property owners and any interested persons may appear and be heard. (Added by L. 1932, ch. 132; amended by L. 1943, ch. 710, effective April 2, 1945.)

§ 98. **Obligations: disposition of proceeds; payment.** The money derived from the sale of any issue of obligations on behalf of the district shall be placed to the credit of the commissioners of the sanitary district by the board of supervisors and shall be subject to the order of said commissioners for the purposes for which said obligations were issued. Payments on such obligations shall be made by the board of supervisors from any funds available for that purpose or by taxes to be collected by the county and based on an annual tax assessment roll against real property benefited in the county. The amount of such annual tax shall be sufficient for retiring and paying the interest due on these obligations as hereinafter provided. (Added by L. 1932, ch. 132; amended by L. 1943, ch. 710, effective April 2, 1945.)

§ 99. **Tax assessments.** The sanitary district commission shall certify to the board of supervisors of the county in which said district is located, or to each of the several boards of supervisors where the whole or parts of

more than one county are included in the district, each year at a time to be set by said boards of supervisors, an annual assessment roll which shall be known as the "sanitary district sewer tax" and shall be collected by the county through the various local town and village tax collectors in the same manner as are county taxes. The total assessment for each year shall be sufficient to provide funds for retiring obligations and paying the interest due on obligations and for maintaining or improving the sewerage system and paying the necessary general expenses of the district. This assessment shall be apportioned against the property in the sanitary district directly or indirectly benefited in proportion as nearly as may be to the benefits derived. The property against which such taxes are levied shall be liable for the payment of said taxes in the same manner as they are liable for town or village taxes. The board of supervisors shall, from taxes so collected, retire obligations and pay the interest due on obligations and shall place all in excess to the credit of the commissioners of the sanitary district to be drawn upon as required for other expenses and charges. The board of supervisors may also advance from general funds available such moneys as may be required to pay the expenses of the commission or the salaries of employees or fees of consultants or other expenses which may become due before such taxes are available but which sums shall be reimbursed from such taxes when collected. (Added by L. 1932, ch. 132; amended by L. 1943, ch. 710, effective April 2, 1945.)

§ 99-a. **Acquiring property, rights of way.** For the purpose of providing for the safe disposal of the sewage of the sanitary district, the commissioners of any such district are hereby authorized to acquire by purchase or by condemnation proceedings any lands and rights of way and easements. Said trustees are also authorized to install and maintain sewers in public streets, roads or highways provided due care is taken to protect existing structures, to facilitate traffic movement during construction and to restore the surface of said streets, roads or highways to their original condition as soon as practicable.

§ 99-b. **Passing rules and regulations.** The commissioners of any sanitary district established under this article are hereby authorized to promulgate from time to time and enforce such rules and regulations as may seem necessary, governing the use of the whole or any parts of sewerage systems under their control.

§ 99-c. **Partial invalidity of article.** If any clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

ARTICLE VI

Quarantine at the Port of New York

(Article repealed by L. 1937, ch. 426, having been transferred to United States Public Health Service on February 28, 1921.)

ARTICLE VII

Health Officer of the Port of New York

(Article repealed by L. 1937, ch. 426, having been transferred to United States Public Health Service on February 28, 1921.)

ARTICLE VIII

Practice of medicine

(Article repealed by L. 1927, ch. 85. Article 48, Education Law, now governs the practice of medicine. Copy of law may be obtained by writing State Department of Education, Albany, N. Y.)

ARTICLE VIII-A

The licensing and registration of midwives*

(Added by L. 1922, ch. 501)

- Section 175. [Necessity of registration and license.]
 176. [Licensed midwives only entitled to register.]
 177. [Place of registration of midwives.]
 178. Application and qualifications.
 179. [Duration of license.]
 180. [Rules and regulations.]
 181. [Revocation of license.]
 182. [Failure to observe rules and regulations.]
 183. [Practices forbidden.]
 184. [Reports.]
 185. [Licenses now existing.] (Repealed.)
 186. [Renewal of licenses.]
 187. [Authority of deputy commissioner of health.]
 188. [Scope of article.]

§ 175. [Necessity of registration and license.]¹ On and after the date of the passage of this act, no person other than a duly licensed and registered physician, shall practice midwifery or use the name or title of midwife unless such person shall be duly registered as a midwife with the local registrar of vital statistics, pursuant to the provisions of section three hundred and eighty-five of the public health law, as amended by chapter six hundred and nineteen of the laws of nineteen hundred and thirteen, and unless such person shall have received a license to practice midwifery from the state commissioner of health.

§ 176. [Licensed midwives only entitled to register.]¹ On and after the date when this act shall take effect, no person not duly licensed as a midwife shall be registered as a midwife by any registrar of vital statistics.

§ 177. [Place of registration of midwives.]¹ On and after the date when this act shall take effect, every licensed midwife shall register her name and address with the registrar of vital statistics of the district wherein she resides and of each district wherein she engages in the practice of midwifery, within ten days after the issuance of such license and after any change in her address.

§ 178. Application and qualifications. No license to practice midwifery shall be issued unless written application therefor, sworn to by the applicant has been made to the state commissioner of health in such form as he shall prescribe. Every applicant for a license to practice midwifery as hereinbefore provided must possess the following qualifications:

- (a) Be not less than twenty-one years of age;
- (b) Be able to read and write; provided that in cases of persons of foreign birth who have extended experience or in other exceptional circumstances this requirement may be waived by the state commissioner of health;

* See §§ 18-c and 385, and Administrative Rules.

¹ Section heading inserted by editor.

(c) Be clean and constantly show evidence, in general appearance and in her home, of habits of cleanliness;

(d) (1) Possess a diploma from a school for midwives recognized by the state commissioner of health;

(2) Present evidence satisfactory to the state commissioner of health of good moral character. Nothing contained in this section, as hereby amended, shall be deemed to prohibit the state commissioner of health from continuing or renewing the license of any person licensed by him prior to the time when this section as so amended takes effect. (Amended by L. 1932, ch. 198.)

§ 179. [Duration of license.]¹ Unless revoked every license to practice midwifery issued by the state commissioner of health shall permit the holder thereof to practice midwifery only during the current calendar year in which such license is issued, the term of said calendar year being from January first in any one year to December thirty-first next succeeding.

§ 180. [Rules and regulations.]¹ The state commissioner of health is hereby authorized and empowered to make such rules and regulations as the state commissioner of health may deem necessary and proper for the supervision and regulation of the practice of midwifery within the state of New York.

§ 181. [Revocation of license.]¹ The state commissioner of health or his deputy may revoke the license to practice midwifery issued pursuant to the provisions of this article, for cause, after having given the midwife whose license is sought to be revoked, an opportunity to be heard.

§ 182. [Failure to observe rules and regulations.]¹ All midwives to whom licenses shall be issued pursuant to the provisions of this article, shall conform to all rules and regulations of the state commissioner of health, the provisions of the sanitary code enacted by the public health council, the provisions of the public health law of the state of New York, the rules and regulations of any local board of health, and all lawful orders and directions of the state department of health or any local board of health, or local health officer, and any violation on the part of any midwife of any of the rules and regulations of the state commissioner of health, the sanitary code as adopted by the public health council, the provisions of the public health law or the rules and regulations of any local board of health, or the disobedience of any lawful order of the state department of health or any local department of health or local health officer, shall be sufficient cause for the revocation of any license issued to a midwife and shall also be a sufficient cause for the withholding of any license to practice midwifery from any midwife so offending in any manner as aforesaid by the state commissioner of health.

§ 183. [Practices forbidden.]¹ A duly licensed and registered midwife may practice midwifery in cases of normal labor and in no others. No midwife shall in any case of labor use instruments of any kind nor assist labor by any artificial, forcible or mechanical means, nor perform version nor attempt to remove adherent placenta nor administer, prescribe, advise or employ any poisonous or dangerous drug, herb or medicine nor attempt the treatment of disease except where the attendance of a physician cannot be speedily secured, and, in such cases, the midwife shall secure the attendance of a physician as soon as possible.*

§ 184. [Reports.]¹ The state commissioner of health is authorized to require of all local health officers a report as to the conduct of the several midwives who may be practicing within the jurisdiction of a local health

* See Penal Law, § 482, subd. 3.

¹ Section heading inserted by editor.

officer, and it shall be the duty of such local health officers to report truthfully any and all matters pertaining to the conduct of any licensed and registered midwife practicing as such in the jurisdiction of any local health officer. All reports of such local health officers respecting the conduct of such midwives, and all reports of any employees of the state department of health relating to the conduct and deportment of midwives so licensed as provided for in this article, made in the course of and as part of the official duties of such employees of the state department of health, shall be deemed prima facie evidence of the facts detailed in said report, and further be deemed sufficient to justify the action of the state commissioner of health in refusing to issue any license to an applicant therefor, where the information as detailed in such reports of any local health officer or the reports of any employee of the state department of health respecting the conduct of any midwife in his judgment justifies the withholding of such a license to such an applicant.

§ 185. [Licenses now existing]¹ (Repealed by L. 1941, ch. 42.)

§ 186. [Renewal of licenses.]¹ Each application to renew a license to practice midwifery as heretofore provided, shall be deemed as a new application and shall be supported by the proof of all the qualifications required of midwives as hereinbefore set forth in this article, or as may be required by any rules and regulations of the state commissioner of health, adopted and promulgated pursuant to the provisions of this article, provided, however, that the state commissioner of health may, in cases where his information with respect to the conduct of midwives satisfies the commissioner of health that a person holding a license is properly qualified and has conformed to the provisions of the public health law, the public health council and the rules and regulations of the state department of health in the practice of midwifery, issue a new license to such person upon an application therefor, without demanding proof of all of the qualifications in this article prescribed or which may be prescribed by the rules and regulations of the state commissioner of health.

§ 187. [Authority of deputy commissioner of health.]¹ All the power and authority conferred upon the state commissioner of health, pursuant to the provisions of this article with respect to the licensing and registration of midwives, may be exercised by the deputy commissioner of health.

§ 188. [Scope of article.]¹ Every regulation in this chapter, unless otherwise specifically stated, shall take effect throughout the state of New York, except in the cities of New York and Rochester.

ARTICLE IX

Dental societies and practice of dentistry

(Article repealed by L. 1927, ch. 85; now Article 49, Education Law. Copy of law may be obtained from State Department of Education, Albany, N. Y.)

ARTICLE X

Veterinary medicine and surgery

(Article repealed by L. 1927, ch. 85; now Article 50, Education Law. Copy of law may be obtained from State Department of Education, Albany, N. Y.)

¹ Section heading inserted by editor.

ARTICLE XI

Pharmacy

(Article repealed by L. 1927, ch. 85; now Article 51, Education Law. Copy of law may be obtained from State Department of Education, Albany, N. Y.)

ARTICLE XI-A

Habit forming drugs

(Article repealed by L. 1918, ch. 639. See herein Art. XXII of Public Health Law.)

ARTICLE XII

Registration of nurses and trained attendants

(Article repealed by L. 1927, ch. 85; now Article 52, Education Law. Copy of law may be obtained from State Department of Education, Albany, N. Y.)

ARTICLE XIII

Chiropody

(Article repealed by L. 1927, ch. 85; now Article 53, Education Law. Copy of law may be obtained from State Department of Education, Albany, N. Y.)

ARTICLE XIV

Embalming and undertaking*

(Added by L. 1927, chs. 48 and 691)

- Section 290. Supervisor of embalming and undertaking. (Repealed.)
291. Powers and duties; rules and regulations.
292. Examination questions and appointments for examinations.
293. Application for license and examination.
294. Duty of state commissioner of health concerning issuance of licenses.
295. Undertakers; examinations and licenses.
- 295-a. Exceptions as to high school education.
- 295-b. Apprenticeship; technical training; registration; fees.
- 295-c. Inspection and approval of schools of embalming and undertaking; fees.
296. Reciprocal licenses; license not assignable.
297. Annual registration.
298. Prohibited practice of embalming or undertaking without a license.
- 298-a. Disposition of fees, fines and penalties.
- 298-b. Refund of fees.
299. Violations of article.

§ 290. Supervisor of embalming and undertaking. (Repealed by L. 1944, ch. 298.)

§ 291. Powers and duties; rules and regulations. The state commissioner of health shall ascertain what constitutes the best tests† for determining whether life is extinct, and shall prescribe the using of such tests, before embalming, as he may deem necessary; and all persons thereafter embalm-

* See State Departments Law, § 341; Public Health Law, § 385 and Art. XIV-A. Article derived from L. 1898, ch. 555. Also see Penal Law, §§ 2210-2221.

† See tests prescribed for signs of death, Administrative Rules.

ing the dead shall apply such tests prescribed before injecting any fluid into the body; and if the body is not to be embalmed the same tests shall be made before it is prepared for burial. The commissioner or his representative may issue subpoenas and administer oaths to witnesses and take testimony concerning matters within the jurisdiction of the department. The commissioner shall, from time to time, make and adopt rules, regulations and by-laws not inconsistent with law, whereby the transaction of the business and the practice of embalming and undertaking shall be regulated and performed.† A certified copy of any of said rules and regulations, attested as true and correct by the commissioner, shall be presumptive evidence of the regular making, adoption and approval thereof. The commissioner may investigate all alleged violations of the statutes relating to embalming and undertaking, and of all rules and regulations adopted as provided in this section. The commissioner may revoke or suspend any license of an undertaker or embalmer upon proof that the same was procured by fraud or that the holder thereof has been convicted of a felony or has violated any of the provisions of the public health law, the general rules and regulations promulgated by the state commissioner of health, the sanitary code established by the public health council of the state of New York or of any statute relating to undertaking or embalming or vital statistics, which now is or may be enacted, promulgated or established. The commissioner may also revoke or suspend such license upon proof that the holder thereof is incompetent to engage in the business of undertaking or embalming or has been guilty of misconduct in the conduct of such business. The action of the commissioner in revoking or suspending such license shall be reviewable by the court, by certiorari. (Amended by L. 1913, ch. 71, L. 1917, ch. 230, L. 1920, ch. 839, L. 1927, ch. 48, L. 1929, ch. 370, and L. 1944, ch. 298.)

§ 292. **Examination questions and appointments for examinations.** For the purpose of providing for and securing uniform examination throughout the state, and requiring a proper standard of qualification for all candidates, the state department of health shall prepare examination questions for the thorough examination of applicants for licenses as embalmers or undertakers, in accordance with the rules and regulations made, adopted and approved as hereinbefore prescribed. Said examination questions shall pertain to embalming, sanitation, disinfection and such other subjects as the commissioner may require. For the purpose of examining applicants for license as embalmers or undertakers the said state department of health shall appoint the times and places for holding examinations, which examinations shall be held at least once in each six months. Such appointment shall be made with due regard to the convenience of applicants and the public service. Said state department of health shall also prescribe the mode and manner of such examinations and appoint the examiner to conduct the same. (Amended by L. 1927, chs. 48 and 691, L. 1929, ch. 370, and L. 1931, ch. 472.)

§ 293. **Application for license and examination.** Every person desiring to engage in the business or practice of embalming, within the state of New York, shall be a citizen of the United States, twenty-one years of age or over, and shall make a written application to the state department of health for an examination for an embalmer's license, accompanying the same with the application fee of five dollars, and with a certificate of two reputable persons, that said applicant is of good moral character, and has obtained a full high school education, or its equivalent, together with evidence satisfactory to the state commissioner of health that the applicant is a citizen of the United States, twenty-one years of age or over, and has served an apprenticeship of not less than two years or otherwise acquired necessary training and experi-

† See Vital Statistics Law, Art. XX; and Sanitary Code.

ence in embalming, whereupon the state commissioner of health shall issue to said applicant a permit to enter any examination held pursuant to the provisions of this article. At the close of every such examination, the permit and the questions submitted and the answers made thereto by the applicant shall be forthwith delivered, by the examiner conducting such examination, to the state department of health. The commissioner of health shall cause them to be examined and a record to be made stating in detail the result of the examination of each candidate. Such record shall embrace all the examination papers, questions and answers thereto, and shall be kept for a period of two years for reference and inspection among the public records of the state department of health and may be destroyed at the expiration of such period. (Amended by L. 1913, ch. 71, L. 1923, ch. 495, L. 1927, chs. 48 and 691, L. 1929, ch. 370, and L. 1934, ch. 222.)

§ 294. Duty of state commissioner of health concerning issuance of licenses. The state commissioner of health shall cause licenses to be issued under seal of the department to those applicants who shall, in his judgment, be duly qualified to practice embalming of human dead bodies in the state of New York, upon said applicant paying an examining and licensing fee of ten dollars. Said license, when issued, shall be recorded and such record shall be open to public inspection. (Amended by L. 1913, ch. 71, and L. 1927, chs. 48 and 691.)

§ 295. Undertakers; examinations and licenses. 1. When used in the public health law the term undertaker shall mean any person holding himself out to be an undertaker, mortician or funeral director.

2. Any person desiring to engage in the business and practice of undertaking shall be a citizen of the United States, twenty-one years of age or over, and shall make a written application to the state commissioner of health for an undertaker's license. The application shall be accompanied with the certificate of two reputable persons, not related to the applicant, that the applicant is of good moral character and has obtained a full high school education, or the equivalent, together with evidence satisfactory to the state commissioner of health that such applicant is a citizen of the United States, twenty-one years of age or over, and has served an apprenticeship of not less than one year or otherwise acquired necessary training and experience in undertaking. The application shall also be accompanied with a fee of five dollars. The state commissioner of health shall issue to such applicant a permit to enter any examination for the license provided for in this subdivision. Upon the applicant's passing a satisfactory examination in sanitation, disinfection, preparation and care of human dead bodies for burial or transportation, and in the laws and health regulations applicable to the care, interment and cremation of the dead, and such other subjects as the commissioner may require, the commissioner shall issue to said applicant, on payment of a further fee of ten dollars, a license to engage in the business and practice of undertaking.

3. No person shall conduct more than one place of business under such license. If an individual, firm or corporation shall desire to engage in the business or practice of undertaking such individual or if a firm at least one member thereof and the manager of each place of business conducted by a firm or corporation shall be a licensed undertaker; and no person whose duties engage him in the care, preparation, disposal and burial of dead human bodies shall discharge the duties of his employment unless he shall be licensed in accordance with the provisions of the article, except that unlicensed employees may assist a licensed person under his immediate personal supervision and control.

4. Notwithstanding the foregoing provisions of this section any person to whom the state commissioner of health pursuant to the provisions of section

two hundred and ninety-three has issued a license to practice embalming shall, upon application and upon payment of the licensing fee of ten dollars but without further examination, be granted a license to practice undertaking. (Added by L. 1917, ch. 230 which repealed former § 295; amended by L. 1920, ch. 839, L. 1927, chs. 48 and 691, L. 1929, ch. 370, L. 1931, ch. 472, and L. 1941, ch. 42.)

§ 295-a. Exceptions as to high school education. (Repealed by L. 1941, ch. 42.)

§ 295-b. Apprenticeship; technical training; registration; fees. The state commissioner of health shall determine what shall be deemed to constitute the necessary training and experience required by sections two hundred and ninety-three and two hundred and ninety-five of applicants for licenses for the practice of embalming and undertaking, whether acquired in a school of embalming and undertaking approved by such commissioner or in the course of an apprenticeship. Every unlicensed person entering upon an apprenticeship with a licensed embalmer or undertaker for the purpose of acquiring training and experience with a view to later making application for admission to licensing examinations shall, as one of the conditions for admission to subsequent licensing examinations, immediately register as an apprentice with the state department of health upon a form to be provided by such department. There shall be paid to the department by each person entering upon an embalming or an embalming and undertaking apprenticeship a fee of six dollars and by each person entering upon an undertaking apprenticeship a fee of three dollars. During such an apprenticeship such apprentice shall keep such records of duties performed by him in the preparation of bodies for burial or otherwise as the state commissioner of health may require as evidence bearing upon his qualification for admission to licensing examinations. If such apprentice shall at any time sever his connection as an apprentice with the licensed person named in his registration and enter service as an apprentice with another licensed person, he shall immediately notify the state commissioner of health of such change. In the event of failure of an apprentice to register as required by this section, the state commissioner of health may, nevertheless, in his discretion, accept satisfactory evidence of completion of an apprenticeship when presented by an applicant for licensing examination upon the payment of the appropriate apprenticeship registration fee required by this section. (Added by L. 1931, ch. 472; amended by L. 1940, ch. 791.)

§ 295-c. Inspection and approval of schools of embalming and undertaking; fees. Any school of embalming and undertaking may apply to the commissioner for the issuance of a certificate of approval for apprenticeship credits so that it may admit students desiring to engage in the business or practice of embalming and/or undertaking in the state of New York. Such application shall be made upon a form prescribed and furnished by the commissioner which shall contain such information as the commissioner may require. Before issuing such certificate, the commissioner shall cause to be made such investigation and inspection of such school as he may deem necessary. A certificate of approval issued under this section shall be valid for a fiscal year ending the thirtieth day of June. The fee for such certificate for each such year or fraction thereof shall be twenty-five dollars which must be submitted with the application. In addition to the fee for such certificate or any renewal thereof, a school located outside the state of New York shall pay the traveling and other expenses incurred by representatives of the department in making the necessary investigation and inspection at such school as the commissioner may prescribe. Each such certificate may be renewed for additional periods of one year upon the payment of an annual renewal fee of twenty-five dollars. (Added by L. 1940, ch. 794.)

§ 296. **Reciprocal licenses; license not assignable.** Any holder of a license issued by a state authority in any other state maintaining a system and standard of examination for licenses to engage in the business of undertaking or of the practice of embalming which in the judgment of the state commissioner of health shall be substantially equivalent to those required in this state for the issue of licenses therefor, may obtain a license from the state department of health under the provisions of this article without examination, in the discretion of the state commissioner of health, upon payment of the application and license fees provided for herein. A copy of any license issued by said commissioner or of any rules, regulations, applications or other records or files of said department duly certified as correct by the state commissioner of health shall be entitled to be admitted in evidence in any of the courts of this state, and shall be presumptive evidence as to the facts therein contained. Every person licensed pursuant to the provisions of this article shall register that fact in the office of the board of health of the city, town, village, consolidated health district or county health district, in which it is proposed to carry on said business, and shall display such license in a conspicuous place in the office or place of business of such licensee. No license granted or issued by said commissioners shall be assignable, and every such license shall specify by name the person to whom it shall be issued, and not more than one person shall practice embalming under one license. This section shall not apply to any personal representative of any deceased undertaker to whom a license shall have been issued under this article, who engages in the business of undertaking and embalming with a person duly authorized to practice the same under the provisions of this article. (Amended by L. 1913, ch. 71, L. 1927, ch. 48, and L. 1929, ch. 370.)

§ 297. **Annual registration.** Every person now holding a license to practice either embalming or undertaking in the state of New York, and every person hereafter issued a license to practice either embalming or undertaking shall, on or before December first of each year, apply to the state department of health for a certificate of registration with the department. Such certificate of registration shall be conspicuously displayed with the original license in the place of business of the licensee. Blank forms shall be furnished by the department which shall be duly executed and returned to the department, together with a fee of two dollars for each licensee.* Every person, firm or corporation engaged in the practice of undertaking in the state of New York shall, on or before December first of each year, apply to the state department of health for a certificate of registration of each place of business which he or it conducts, such certificate of registration to be conspicuously displayed in each such place of business. Blank forms shall be furnished by the department which shall be duly executed and returned to the department together with a fee of one dollar for each such certificate of registration.

The person, firm or corporation registering as required by this section shall furnish upon the application blank such information as the department may require, and when the commissioner of health shall so require shall duly execute and verify the same before an officer empowered to take acknowledgments of deeds and shall deliver the same to said department of health by mail or in person.

Embalmers and undertakers shall communicate with the state department of health in the event that the application blank for registration or re-registration fails to reach them. Failure to receive such applications will be no excuse for not registering or re-registering. Application blanks for registration shall be mailed to embalmers and undertakers addressed to their last known addresses between September first and November fifteenth of each

* So in original. [Should read "license."]

year and certificates of registration for the year will be issued beginning January first next.

Any licensed embalmer or undertaker and any firm or corporation engaged in the practice of undertaking or embalming failing to register by December first of any year, as required by the provisions of this section, shall be required to pay for registration, in addition to the fee hereinbefore prescribed, a further fee of one dollar for each thirty days or part thereof, that he or it is in default; and any such licensed embalmer, undertaker, firm or corporation wilfully refusing or omitting to register hereunder and engaging in the practice of embalming or undertaking shall be subject to a civil penalty of one dollar for each day that such practice shall continue and if the same shall continue for more than thirty days the penalty thereafter shall be two dollars per day as long as the practice shall continue; said penalty shall be recoverable in an action by the attorney-general of the state maintained in the name of the people of the state of New York.

Except that the state commissioner of health may suspend the license of a person, firm or corporation wilfully refusing or omitting to register hereunder until such time as the penalties herein prescribed shall have been collected, the penalties provided in this section for failure, neglect or omission to register as required by the section shall be the only penalties that may be imposed therefor, and such penalties may for good cause shown, in the discretion of the state commissioner of health, be remitted or compromised. (Added by L. 1929, ch. 370; amended by L. 1931, ch. 472.)

§ 298. Prohibited practice of embalming or undertaking without a license. No person to whom a license has not been issued as prescribed by laws of eighteen hundred and ninety-eight, chapter five hundred and fifty-five, as amended, or who has not been licensed as herein specified, shall transact or practice or hold himself or herself out as transacting or practicing the business or practice of embalming or undertaking within this state, except that nothing in this article contained shall prohibit embalming by commissioned medical officers in the army or navy of the United States, or in the United States public health service while so commissioned, or any one actually serving as a member of the resident medical staff of any legally incorporated hospital, or any person duly licensed to practice as a physician or surgeon in this state. The name of no living person who has not been licensed as herein specified, shall be used alone, in, as part of, or in connection or together with the name or title of any person, firm, corporation or other form of enterprise engaged in embalming or undertaking or maintaining a mortuary, funeral home or other similar establishment and/or using in connection with their name and business, the words funeral director, mortician, undertaker, embalmer, or any other title or words of similar meaning and/or import, in such manner as to give or tend to give the impression that such person is licensed or practicing or entitled to practice as an embalmer or undertaker. (Amended by L. 1911, ch. 841, L. 1931, ch. 472, and L. 1934, ch. 270.)

§ 298-a. Disposition of fees, fines and penalties. All fees, fines, penalties or other moneys derived from the operation of this article shall be paid to the state commissioner of health and on the fifth day of each month shall be paid by him to the state treasury. (Added by L. 1931, ch. 472; amended by L. 1937, ch. 37.)

§ 298-b. Refund of fees. Moneys received pursuant to this article may be refunded to the applicant on proof satisfactory to the commissioner of health: (a) That such moneys were in excess of the amounts required by law.

(b) That examination for which application has been made and for which fee has been paid was denied.

* So in original. [Evidently should be "to."]

(c) That individual corporation or association which has applied for registration or license, has prior to the commencement of the period of such registration or license, ceased business because of death, dissolution or removal from the state. (Added by L. 1940, ch. 168.)

§ 299. **Violations of article.** Any person who shall engage in the business or practice of embalming or undertaking in violation of any provisions of this article shall be liable to a penalty of one hundred dollars and shall also be guilty of a misdemeanor. Each day during which or any part of which any such prohibited business or practice is continued shall be deemed a separate violation. One or more penalties for one or more violations by the same person within any period of time may be sued for and recovered by the attorney-general in the name of the people of the state. (Added by L. 1911, ch. 841; amended by L. 1917, ch. 230, and L. 1920, ch. 839.)

ARTICLE XIV-A

Practice of funeral directing, undertaking and embalming

(Added by L. 1944, ch. 647.)*

Section 299-a. Definitions.

- 299-b. Powers and duties of the commissioner.
- 299-c. Qualifications, examinations, exemptions and fees.
- 299-d. Biennial registration.
- 299-e. Funeral establishments.
- 299-f. Revocation or suspension of license.
- 299-g. Violations; prosecutions; penalties.
- 299-h. Construction of article.
- 299-i. Validity.
- 299-j. Inconsistent provisions of other laws.

§ 299-a. Definitions. As used in this article:

1. "Department" means the health department of the state of New York.
2. "Commissioner" means the commissioner of health.
3. "Funeral director" means a person engaged in any of the following:
 - a. In the care and disposal of the human dead; and/or
 - b. In the practice of preserving, disinfecting and preparing by embalming or otherwise, the human dead for funeral services, transportation, burial or cremation; and/or
 - c. In the practice of funeral directing or embalming as presently known, whether under these titles or designations or otherwise.
4. "Undertaker" means a person to whom a valid license as such has been or may be duly issued.
5. "Embalmer" means a person to whom a valid license as such has been or may be duly issued.
6. "Funeral establishment" means every place or premises devoted to or used in the care and preparation for burial of human dead or maintained or held out to the public by advertising or otherwise as the office or place for the transaction of business by an undertaker or funeral director.
7. "Burial" includes transportation and/or cremation.
8. "Advertisement" means the publication, dissemination, circulation, or placing before the public, or causing directly or indirectly to be made, published, disseminated, or placed before the public, any announcement or statement in a newspaper, magazine, or other publication, or in the form of a book, notice, circular, pamphlet, letter, hand-bill, poster, bill, sign, placard, card, label or tag, or over any radio station.

* See Art. XIV and Administrative Rules; also Penal Law, §§ 2210-2221.

9. "Apprentice" means a person who is engaged in learning to practice as an undertaker, embalmer, or funeral director as the case may be, under the personal supervision and instruction of a duly licensed undertaker, embalmer, or funeral director of and in the state of New York under the provisions of this chapter, and who is duly registered as such with the department.

§ 299-b. Powers and duties of the commissioner. 1. The commissioner may make such rules not inconsistent with law as may be necessary in the performance of his duties and the administration of this article and to govern the conduct and practice of undertaking, embalming, and funeral directing, and shall ascertain what constitutes the best tests for determining whether life is extinct, and shall prescribe the using of such tests, as he may deem necessary; and all persons thereafter embalming the dead shall apply such tests prescribed before injecting any fluid into the body; and if the body is not to be embalmed the same tests shall be made before it is prepared for burial. A certified copy of any such rules and regulations, attested as true and correct by the commissioner, shall be presumptive evidence of the regular making, adoption and approval thereof. The commissioner shall have the power to compel the attendance of witnesses, to administer oaths, and to take testimony and proofs concerning all matters within the jurisdiction of the department.

2. The commissioner shall appoint such personnel as he may deem necessary, who, subject to the supervision, direction, and control of the commissioner, shall exercise the powers and perform the duties of the department and advise the commissioner under this article.

§ 299-c. Qualifications, examinations, exemptions and fees. 1. No person shall engage in the practice of undertaking, embalming or funeral directing unless duly licensed according to law, and registered under the provisions of article fourteen of this chapter, or unless he shall be licensed and registered as required by this article.

Every person desiring to enter in the practice of undertaking, embalming, or funeral directing on and after April first, nineteen hundred forty-five, except as hereinafter provided, shall pass an examination to determine his knowledge and fitness therefor, as required by this article.

The commissioner shall determine the subjects of examination and their scope, content and character, which in any examination shall be the same for all candidates. Examinations shall be held twice in each year.

The department shall admit to examination any applicant who pays a fee of thirty dollars and submits evidence verified by oath and satisfactory to the department that:

- a. He is more than twenty-one years of age;
- b. He is a citizen of the United States;
- c. He is of good moral character;
- d. He has satisfactorily completed a four-year course of study in a secondary school registered by the department of education as maintaining a satisfactory standard or the equivalent thereof as determined by the department of education prior to beginning his funeral director school study or practical training and experience, and
- e. He either has satisfactorily completed a course of study in a school for funeral directors approved by the department as maintaining a satisfactory standard and has had one year of practical training and experience in regular, steady, bona fide, full-time employment, under the personal supervision and instruction of an undertaker and embalmer, or a funeral director, such training and experience to be in the state of New York and of a grade and character satisfactory to the department; or has had such practical training and experience of not less than two years;

f. He has, upon entering a funeral director school or the employ of an undertaker and embalmer or of a funeral director for the purpose of beginning his funeral director school study or training and experience, registered as a student or apprentice with the department, upon a form to be provided by the department, and has paid to the department a registration fee of six dollars.

The applicant and the employer shall maintain and file such periodic records and reports as the department shall require, and shall promptly notify the department of any change in school registration and/or change of employment. Delay in registering as required by this subdivision, may, in the discretion of the department, be excused, upon satisfactory explanation by the student including documentary proof of such school attendance or employment, but in no event shall any credit be given for practical training and experience in employment, more than six months prior to the date of such registration.

When the applicant has successfully passed the examination, the department shall issue to said applicant a license to practice funeral directing.

If a candidate fails on the first examination, he may have a second examination within two years of such examination, without additional fee.

2. The department may, in its discretion, upon the submission of evidence of qualifications as provided in this section and without examination, but otherwise subject to the qualifications for funeral director license prescribed in this article, and the rules of the department promulgated hereunder, including the payment of a fee of thirty dollars, endorse a license as a funeral director issued by the proper authorities of any other state or political subdivision of the United States maintaining a system and standard of qualification and examination for funeral director's license, which in the judgment of the department shall be substantially equivalent to those required in this state, and which shall give similar recognition and endorsement to licenses of this state, to any citizen, provided that the applicant for such endorsement, since receiving such certificate, has been engaged in the practice of funeral directing for three years or more in one or more of the states or political subdivisions of the United States, and such applicant is actually so engaged at the time of application for endorsement, and is in good and regular standing as a funeral director in each state or political subdivision of the United States from which he has ever received a funeral director license.

3. Until January first, nineteen hundred forty-seven the department shall hold examinations for undertaker and embalmer, in the manner provided by article fourteen of this chapter and the rules and regulations promulgated thereunder and such re-examinations as may be necessary, thereafter. The department shall admit to such examination any person, who, at the time this article takes effect, shall be duly registered as an apprentice with the state department of health and shall otherwise be qualified in accordance with article fourteen of this chapter. The department shall issue an undertaker or embalmer license to those who shall so qualify and pass such an examination and said license shall entitle their holders to practice in accordance with the provisions and limitations of article fourteen of this chapter and under the provisions and limitations of this article.

4. In case any person who is such a duly registered apprentice at the time this article takes effect, shall be in the armed forces of the United States and the completion of his training and experience shall have been interrupted by his service in the armed forces of the United States, he shall be permitted to resume his training and experience at any time within one year after the date of his discharge from service, and the department shall accordingly continue to hold such examinations for such candidates for undertaker and embalmer licenses and to issue such licenses as herein provided.

5. All fees, fines, penalties and other moneys derived from the operation of this article or rules shall be paid to the department and on the fifth day of each month shall be paid by the department to the state treasury.

6. Nothing in this article shall prohibit embalming by commissioned medical officers in the armed forces of the United States, or in the United States public health service while so commissioned, or any one actually serving as member of the resident medical staff of any legally incorporated hospital, or any person duly licensed to practice as a physician or surgeon in this state.

7. The department may, upon receipt of satisfactory evidence that a license certificate has been lost, mutilated, or destroyed, and upon such terms and conditions as the commissioner shall prescribe, and upon the payment of a fee of two dollars, issue a duplicate certificate.

8. The department shall issue a certificate of approval to each school for funeral directors approved by the department as maintaining a satisfactory standard. The fee for such certificate for each year or fraction thereof shall be twenty-five dollars. In addition to the fee or any renewal thereof, a school located outside the state of New York shall pay the traveling and other expenses incurred by representatives of the department in making such investigation and inspection as the commissioner may prescribe.

9. Following the close of every examination the questions submitted and the answers made thereto by the applicant together with a record stating in detail the result of the examination for each candidate, shall be kept by the department for a period of two years for reference and inspection, among the public records of the department. These may be destroyed at the end of such period.

§ 299-d. **Biennial registration.** 1. Every person practicing as an undertaker, or embalmer, or funeral director, or who maintains within the state, a funeral establishment as herein defined shall biennially apply to the department for a certificate of registration and report under oath any facts requested by the department. An undertaker or embalmer shall pay to the department a biennial registration fee of four dollars; a funeral director shall pay a biennial registration fee of eight dollars; the owner of a funeral establishment shall pay a biennial registration fee of two dollars for the registration of each establishment. Upon verification of the statements thus reported and the receipt of the requisite fee, the commissioner shall issue a certificate of registration. The certificate of registration of the funeral establishment and the licenses required to be displayed in section two hundred ninety-nine-e together with their respective registration certificates, must be conspicuously displayed in the funeral establishment. These certificates of registration shall all bear the date of January first of the year of issue, and shall expire on the thirty-first day of December of the second year following. Those persons being duly licensed to practice as undertakers, embalmers, or funeral directors during the second year of a biennial registration period shall pay a fee of two dollars for undertakers registration, two dollars for embalmers registration and four dollars for funeral directors registration and the owner of a funeral establishment registered during the second year of any biennial registration period shall pay a registration fee of one dollar for the registration of such establishment and all of such registrations shall expire on the thirty-first day of the following December.

2. For failure to register, an additional fee of one dollar for each delay of thirty days or part thereof, beyond the first day of January shall be added to the regular fee. The commissioner may, for good cause shown, waive or compromise all or any part of this additional fee. The department shall, as soon as practical after the registration period, make a list of those persons to whom certificates of registration were issued during the previous two years to practice as undertaker, embalmer, or funeral

director and registered establishments. Such list shall be distributed as the commissioner of health shall direct.

3. If any undertaker, embalmer or funeral director continues to practice or any owner continues to operate and maintain a funeral establishment, without registration as herein provided, the license or registration may be suspended or revoked by the department in accordance with the provisions of this article.

4. An undertaker, embalmer or funeral director who has been heretofore duly licensed and registered to practice in this state whose license shall not have been revoked or suspended in accordance with section two hundred ninety-nine-f, and who either before or after registration as required by this section shall have temporarily abandoned the practice of undertaking, embalming or funeral directing, or shall have removed from the state, may register within the state upon complying with the provisions of this section for registration and also filing with the department his affidavit of such facts.

§ 299-e. **Funeral establishments.** No funeral establishment shall be operated within the state unless:

a. if the owner is an individual, he shall be a duly licensed undertaker or funeral director; if the owner is a partnership hereafter organized and registered with the department, all partners shall be duly licensed undertakers or funeral directors; if the owner is a corporation, or is a partnership organized and registered with the department before the enactment of this law and having any unlicensed partners, or is the legal representative of a deceased undertaker or funeral director, the licensed manager registered with the department shall be a duly licensed undertaker or funeral director;

b. the owner shall biennially register with the department in accordance with the provisions of section two hundred ninety-nine-d;

c. the certificate of registration issued by the department to the establishment shall be conspicuously displayed;

d. the licenses of the individual owner, the licensed partners, or the manager of the establishment in all cases where the establishment is not managed by a licensed individual owner or licensed partner, shall be conspicuously displayed;

e. it shall be under the immediate and personal supervision, direction, management, and control of a licensed undertaker or funeral director, registered with the department, who shall not serve as the manager of more than one funeral establishment; and all undertaking, embalming and funeral directing shall be under the immediate and personal supervision, direction, management, and control of a duly licensed person;

f. its maintenance and operation shall conform to the rules of the department.

§ 299-f. **Revocation or suspension of license.** 1. The license of an undertaker, embalmer, or funeral director may be revoked or suspended, or such licensee may be reprimanded or otherwise disciplined in accordance with the provisions of this article, upon proof that he has violated any of the provisions of this article; or has been convicted of a crime; or has been guilty of fraud, deceit or misrepresentation in his practice or in securing admission to practice; or is an habitual drunkard; or is addicted to the use of morphine, opium, cocaine or other drugs having a similar effect; or has practiced without biennial registration; or has employed, hired, procured or induced or otherwise aided or abetted any person not licensed or registered to practice or hold himself out as licensed, practicing, or entitled to practice as an undertaker, or embalmer, or funeral director; or has wrongfully transferred or surrendered possession, either temporarily or permanently, of his license or certificate to any other person; or has paid, given, has caused to

be paid or given or offered to pay or to give to any person a commission or other valuable consideration for the solicitation or procurement, either directly or indirectly of funeral patronage; or has been guilty of fraudulent, misleading or deceptive advertising; or has practiced under a false name; or has falsely personated another licensee of a like or different name; or has violated any of the provisions of the public health law, the rules and regulations promulgated by the commissioner, or of any statute, code, rule or regulation relating to the practice of undertaking, embalming or funeral directing.

The commissioner shall also have power, and after due notice and an opportunity to be heard, to revoke or suspend the endorsement of the funeral director's license issued to any person pursuant to section two hundred ninety-nine-e upon evidence that the duly constituted authorities of any state or political subdivision of the United States have lawfully revoked or suspended the funeral director's license issued to such person by such state or political subdivision.

2. Any person, public officer, or association, or the department may for due cause, prefer charges hereunder against any licensee; such charges shall be in writing and verified under oath and shall be submitted to the department. The commissioner or any person or persons appointed by him for the purpose, may hold a preliminary hearing to determine whether a trial on the formal charges is necessary. The commissioner may dismiss the charges and take no action thereon, by formal hearing or otherwise, in his discretion, in the event that he or the person or persons thus appointed by him do not deem a formal hearing necessary, in which event the charges and the order dismissing the charges shall be filed with the department. If the commissioner or the person or persons thus appointed by him decide that the charges shall be heard, the commissioner shall designate an officer of the department to determine the charges and set a time and place for a hearing.

A copy of the charges, together with notice of the time and place of the hearing, shall be served on the accused at least ten days before the date fixed for the hearing. Where personal service cannot be effected and such fact is certified on oath by any person duly authorized to make legal service, the department shall cause to be published twice in each of two successive weeks, a notice of the hearing in a newspaper published in the county in which the accused was last known to practice, and on or before the date of the first publication a copy of the charges and of such notice shall be mailed to the accused at his last known address. When publication of the notice is necessary, the date of the hearing shall be not less than ten days after the last date of publication of the notice.

At the hearing the accused may appear personally and shall have the right of counsel and to cross examine witnesses against him and to produce evidence and witnesses in his defense.

3. The commissioner and any person designated by him for this purpose, may issue subpoenas and administer oaths in connection with any hearing or investigation under this article, and it shall be the duty of the commissioner and any persons designated by him for such purpose, to issue subpoenas at the request of and upon behalf of the defense. The commissioner and those designated by him shall not be bound by the laws of evidence in the conduct of its proceedings, but the determination shall be founded upon sufficient legal evidence to sustain it. The attorney-general may prefer charges, attend hearings, present the facts and take any and all proceedings in connection therewith. Upon the conclusion of the hearing the commissioner shall thereupon take such action upon such findings and determination as he deems proper and shall execute an order carrying such findings into effect. The action shall be revocation of the license of the accused, or suspension

thereof for a fixed period, or reprimand, or other disciplinary action in accordance with this article, or a dismissal of the charges.

Any person who shall practice as an undertaker, or embalmer, or funeral director, while his license is revoked or suspended shall be guilty of a misdemeanor. The department may, in its discretion, reissue a license to any person whose license has been revoked. Application for the re-issuance of a license shall not be made prior to one year after revocation and shall be made in such manner as the department may direct. The commissioner in his discretion may direct a rehearing or take additional evidence, and may rescind or affirm the prior determination after such rehearing. An order of suspension made by the commissioner may contain such provisions as to reinstatement of the license as the commissioner shall direct.

4. A person convicted of a felony shall forfeit his license to practice as an undertaker, embalmer, or funeral director, and upon presentation to the department of a certified copy of a court record showing that a practitioner of any of these has been convicted of felony, that fact shall be noted on the record of license, and the license shall be revoked, and the registration shall be cancelled. If such conviction be subsequently reversed upon appeal and the accused acquitted or discharged, his license shall become again operative from the date of such acquittal or discharge.

5. The conviction of a felony aforementioned shall include the conviction of a felony by any court in this state or by any court of the United States or by any court of any other state of the United States, and in the event that a crime of which the licensee is convicted by any court of the United States or by any other state is not a felony in the jurisdiction in which the conviction is had but is a felony in the state of New York, then the conviction shall be deemed a conviction of a felony for the purposes of this article. If a person convicted of a felony or crime deemed hereby to be a felony is subsequently pardoned by the governor of the state where such conviction was had, or by the president of the United States, the commissioner may, in his discretion, on application of such person, and on the submission to him of satisfactory evidence, restore to such person the right to practice in this state.

§ 299-g. Violations; prosecutions; penalties. 1. Any person who shall obtain or attempt to obtain or aid in obtaining any license under this article by any false or fraudulent statement or representation, or shall practice or aid and abet in the practice of undertaker, embalmer, or funeral director, or shall hold himself out as licensed or able to practice or as practicing or entitled to practice without conformity to the requirements of this article, or who shall otherwise violate or neglect to comply with any of the provisions of this article, shall be guilty of a misdemeanor and shall, on conviction, for each and every offense be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for a term of not less than thirty days and not more than one year, or by both such fine and imprisonment, and for a second offense shall be punishable by both such fine and imprisonment. All courts of special sessions within their respective territorial jurisdictions are hereby empowered to hear, try and determine such crimes without indictment and to impose in full the punishments of fines and imprisonments herein prescribed.

The display, publication or dissemination by any person of an advertisement, card, sign or any other representation bearing a name, designation or description as a practitioner of undertaking, embalming or funeral directing, in any manner or by implication, shall be presumptive evidence of a holding out of such practice by such person.

The attorney-general of the state shall have the power to prosecute in any county of the state any violations of this article; such prosecution may

be instituted by him in his discretion or after complaint made to him by any person, provided, however, that nothing in this section shall be interpreted to prevent or impede the prosecution of such proceedings by the district attorney of any county in which the offense is committed when such proceedings have been instituted by him.

In any prosecution or hearing hereunder it shall be necessary to prove only a single act prohibited by law or a single holding out or attempt, without having to prove a general course of conduct, in order to constitute a violation.

All violations of this article when reported to the department and duly substantiated by affidavits, or other satisfactory evidence, shall be investigated and, if the report is found to be substantiated, the department shall report such violations to the attorney-general and request prompt prosecution.

2. The attorney-general may maintain an action upon his own information or upon the complaint of any person against any person, partnership, corporation or association, and any employee, agent, director or officer thereof, who shall violate any of the provisions of this article. In such action the final judgment in favor of the plaintiff must perpetually restrain the defendant or defendants from the commission or continuance of the acts complained of. A temporary injunction to restrain the commission or continuance thereof may be granted upon proof, by affidavit, that the defendant has or defendants have violated any of the provisions of this article. The provisions of statute or rule relating generally to injunctions as provisional remedies in actions shall apply to such temporary injunction and the proceedings thereupon. The plaintiff in such action shall be entitled to an examination before trial of the defendant or defendants and of witnesses as to testimony that is material and necessary in such action. The action aforesaid shall be in addition to the above penal proceedings.

§ 299-h. **Construction of article.** 1. A person who holds a license as an undertaker or embalmer, as defined herein, and is registered as required herein, shall be entitled to practice as defined and limited by the provisions of the law at the time the license was issued, except as otherwise provided by this article.

2. A person who holds a license as an undertaker or funeral director and is registered as required herein may hold himself out and advertise as an undertaker, funeral director, or mortician.

3. The name of no living person who has not been licensed as herein specified shall be shown or displayed upon or in any funeral establishment, or used alone, in, as part of, or in connection, association, combination, or together with the name or title of any person, firm, corporation or other form of enterprise engaged in undertaking, embalming, or funeral directing or maintaining a mortuary, funeral home or other similar establishment and/or using in connection with their name and practice, the words funeral director, mortician, undertaker, embalmer, or any other title or words of similar meaning and/or import on any card, sign, stationery, or other printed, engraved or written instrument or device or in any public or private announcement or advertisement, or in any manner as to give or tend to give the impression that such person is licensed or practising or entitled to practice as an undertaker, embalmer, or funeral director.

§ 299-i. **Validity.** If any provisions of this article shall be adjudged unconstitutional or ineffective in whole or in part by a court of competent jurisdiction or the applicability thereof to any persons, groups or circumstances is held invalid, then to the extent that it is not unconstitutional or ineffective such provision shall be in force or effect; nor shall such determination be deemed to invalidate the remaining provisions hereof and the applicability thereof to other persons and circumstances.

§ 299-j. **Inconsistent provisions of other laws.** The provisions of this article shall supersede any inconsistent provisions of article fourteen of this chapter and of any general, special, or local law.

ARTICLE XV

Sanitary conditions in hotels

(Added by L. 1913, ch. 630)

(Formerly Article XX)

(Article and sections renumbered by L. 1941, ch. 42)

- Section 300. Sewers and drainage.
 301. Bedding, sheets and towels.
 302. Violation a misdemeanor; enforcement.

§ 300. **Sewers and drainage.** Every hotel in this state shall be well drained and ventilated and every hotel connected with a cesspool or located in any city or village having a sewer system shall be well ventilated, drained, plumbed and connected according to sanitary principles with such cesspool or sewer system, and shall be kept free from effluvia arising from sewer, drain, water-closet or other source within the control of the owner, manager, agent or other person in charge of said hotel. (Formerly section 354.)

§ 301. **Bedding, sheets and towels.** Every hotel in this state shall furnish each guest with clean linen or cotton individual towels in each room occupied by such guest, and also in the public lavatories and washrooms of such hotel, and with clean sheets and pillow slips for the bed, bunk, or cot to be occupied by such guest. Each sheet used shall be ninety-one inches long, minimum length after being hemmed and laundered, and of sufficient width to completely cover the mattress and springs, and all sheets and pillow slips after being used by one guest must be washed, ironed and dried before being furnished to another guest. (Formerly section 355.)

§ 302. **Violation a misdemeanor; enforcement.** All departments of health and the commissioner or commissioners thereof shall have power to enforce the provisions of this article. The commissioners of health and the respective local boards of health and any person authorized by either of them so to do, may enter any hotel or any part thereof at any reasonable time to inspect and examine the same, to determine whether or not the laws relating to hotels are being complied with. Any hotel proprietor or manager violating any of the provisions of this article is guilty of a misdemeanor. This article shall not apply to cities having a population of one million inhabitants or over. (Formerly section 356.)

ARTICLE XVI

Preservation of life and health, cadavers for medical and surgical study

- Section 310. Vaccination of school children.
 311. Vaccination, how made; reports.
 312. Regulating the sanitary conditions of bathing establishments and the preservation of life at bathing places.
 313. Examination and quarantine of children admitted to institutions for orphan, destitute or vagrant children or juvenile delinquents.
 314. Monthly examination of inmates and reports.

- 315. Beds; ventilation.
- 316. [Unclaimed cadavers; delivery to medical schools; autopsies upon; disposal of remains].
- 317. Cadavers in certain counties.
- 318. Prescription of opium, morphine, cocaine and chloral. (Repealed.)
- 318-a. Sale of hypodermic syringes and needles. (Repealed.)
- 319. Consents requisite to the establishment of hospitals or camps for the treatment of pulmonary tuberculosis.
- 320. Reports of tuberculosis by physicians and others. (Repealed.)
- 320-a. Reports of children with impaired hearing by physicians and others.
- 321. Examination of sputum.
- 322. Protection of records.
- 323. Disinfection of premises.
- 324. Health officer to direct disinfection, cleansing or renovation.
- 325. Prohibiting occupancy until order of health officer is complied with.
- 326. Prohibiting carelessness of a person having tuberculosis.
- 326-a. Control of dangerous and careless patients.
- 327. Protection of patient's family.
- 328. Providing that physicians shall make a complete statement of procedure and precautions on a blank to be furnished by the health officer. (Repealed.)
- 329. Penalty for failure of physician to perform duties or for making false reports.
- 330. Reporting recovery of patient.
- 331. General penalty.
- 332. Application of provisions.
- 333. Like privileges in hospitals to be granted to matriculated students of medical colleges.
- 334. Iron stairways on outside of hospital, sanitarium and certain other buildings.
- 334-a. Equipment of asylums, almshouses, hospitals, orphanages and schools with fire alarm boxes.

§ 310. **Vaccination of school children.*** 1. A child or person not vaccinated shall not be admitted or received into a school in a city having a population of fifty thousand or more inhabitants, according to the latest federal or state census or enumeration as from time to time made. The board, officers or other person having charge, management or control of such school shall cause this provision of law to be enforced. The board of health or other board, commission or officers of such city having jurisdiction of the enforcement of this chapter therein shall provide, at the expense of the city, for the vaccination of all pupils of such school whose parents or guardian do not provide vaccination for them.

2. Whenever smallpox exists in any other city or school district, or in the vicinity thereof, and the state commissioner of health shall certify in writing to the school authorities in charge of any school or schools in such city or district, it shall become the duty of such school authorities to exclude from such schools every child or person who does not furnish a certificate from a duly licensed physician to the effect that he has successfully vaccinated such child or person with vaccine virus in the usual manner or that such child or person shows evidence by scar of a successful previous vaccina-

* See § 25; Education Law, § 276; Sanitary Code; Penal Law, §§ 1740, 1741.

tion. Whenever school authorities having the charge, management and control of schools in a district or city cause this provision of law to be enforced, the local board of health shall provide for the vaccination of all children whose parents or guardian do not provide such vaccination.

3. The expense incurred, when such vaccination is performed under the direction of the local health authorities, shall be a charge upon the municipality in which the child or person vaccinated resided, and shall be audited and paid in the same manner as other expenses incurred by such municipality are audited and paid. The local boards of health or other health authorities may, in their discretion, provide for the payment of additional compensation to health officers performing such vaccination. (Amended by L. 1915, ch. 133, and L. 1929, ch. 140.)

§ 311. **Vaccination, how made; reports.** 1. No person shall perform vaccination for the prevention of smallpox who is not a regularly licensed physician under the laws of the state. Vaccination shall be performed* in such manner only as shall be prescribed by the state commissioner of health.**

2. No physician shall use vaccine virus for the prevention of smallpox unless such vaccine virus is produced under license issued by the United States public health service or under a certificate of approval issued by the state commissioner of health, and such vaccine virus shall then be used only within the period of time specified by the expiration date.

3. Every physician performing a vaccination shall within ten days make a report to the local health officer upon a form furnished by the state commissioner of health setting forth the full name, age and address of the person vaccinated, the date of vaccination, the name of the maker of the vaccine virus, the lot or batch number of such vaccine virus, the type of reaction found upon re-examination after a proper interval, whether such person had been previously successfully vaccinated or not and if possible the date of said previous successful vaccination.

4. Every local health officer shall retain in the files and records of his office every report of a vaccination reported to him under the provisions of the preceding paragraph and shall report once in each month to the state department of health the number of vaccinations reported to him during the preceding month, together with the number of those which were successful and the number unsuccessful. Such report shall be made in such manner as shall be prescribed by the state commissioner of health. (Amended by L. 1915, ch. 133, L. 1924, ch. 25, L. 1925, ch. 368, L. 1929, ch. 140, and L. 1942, ch. 96.)

§ 312. **Regulating the sanitary conditions of bathing establishments and the preservation of life at bathing places.** It shall be unlawful for any person to maintain, either as owner or lessee, any bathing establishment of any kind, in this state, for the accommodation of persons, for pay, or any consideration, at a point less than five hundred feet from any sewer connection emptying therein, or thereat, so as to pollute in any way, the waters used by those using or hiring bathing houses at such bathing establishments; it shall be the duty of such owner or lessee to provide separate toilet rooms, with waterclosets properly provided with sanitary plumbing, constructed in a manner approved by the local board of health and in such a way as not to contaminate the waters used by the bathers; it shall also be the duty of such owner or lessee to thoroughly wash and disinfect, or cause to be thoroughly washed and disinfected, in a manner approved by the local board of health, all bathing suits that have been hired or used, before re-hiring or permitting the use of the same again; it shall be the duty of every person

* So in original. [Probably should read "performed."]

** See Administrative Rules, Approved Methods of Vaccination.

maintaining, as owner or lessee, any bathing establishment of any kind along the seashore of this state for the accommodation of persons for pay, to provide, for the safety of such bathers, two lines of sound, serviceable and strong manila or hemp rope, not less than one inch in diameter, anchored at some point above high water, at the same distance apart as the lines of bathing houses, or space fronting on such beach occupied by him or them, is in width; and from the two points at which such life-lines are so anchored, such lines shall be made to extend as far into the surf as bathing is ordinarily safe and free from danger of drowning to persons not expert in swimming, and at such points of safety, such lines shall be anchored and buoyed. From the two points of such lines so extended, anchored and buoyed, a third rope shall be extended, of a similar size, connecting the two extremities, and buoyed at such points as to be principally above the surface of the water, thereby inclosing a space within such lines and the beach within which bathing is believed to be safe; and in addition thereto, there shall be sufficient ropes of a similar size as herein described, anchored from a point at high-water mark and buoyed or anchored on a parallel line or within the outer cross rope, so as to have not more than a space of seventy-five feet from one rope to another; every such person or persons maintaining such bathing establishments, shall cause to be painted and put up in some prominent place upon the beach near such bathing houses the following words: "Bathing beyond the lines dangerous." Such lines so placed, anchored and buoyed, and such notice so put up, shall continue and so be maintained by every such person or persons, during the entire season of surf bathing. Every such person or persons maintaining any such bathing establishment shall also keep and provide in connection therewith, for the facilitating of the rescue of persons in danger of drowning, a surf-boat, not less than sixteen feet long, on each side of which there shall be hanging ropes arranged so that persons in the water can easily catch hold of same, or be supported thereby, and such boats shall be equipped with two or more sets of oars and life-lines and life-belts, and at least one ring buoy or life preserver, with quarter-inch cotton line, not less than five hundred feet in length, with suitable reel attached thereto, and in addition thereto, there shall be anchored on the shore, a suitable reel with a half-inch cotton line not less than five hundred feet in length, with a life-belt attached thereto, kept in good order and proper condition, so that it can readily be used by those assisting in saving life. At all such bathing establishments where there are equipments for two hundred bathers or more, said surf or life-boat shall be stationed in the water, opposite the lines, manned and in readiness for use, during bathing hours; there shall also be at every public bathing establishment a bathing master or life-guard, who shall be an expert swimmer, and who shall be in constant and watchful attendance during bathing hours. Any person or persons violating any of the provisions of this section shall forfeit and pay a penalty of not less than fifty dollars, nor more than two hundred dollars to be recovered by the sheriff of the county in which such violation is committed, except in the city of New York, when the penalty shall be sued for in the name of the department of health of the city of New York and collected by it. It shall be the duty of the sheriffs and constables of the several counties of this state abutting upon the seashore, to see that in their respective counties the provisions of this section are enforced, and to bring suit for the recovery of the penalty therein provided, unless some other person had already brought suit for the same. A separate penalty may be recovered for each day that any person subject to the provisions of this section may violate any of the provisions of the same; but no penalty shall be recovered for any other violation thereof than shall have occurred during the days when the owner or lessee, or other person or persons, maintaining the said bathing establishments, shall have kept the same open for the use

of the public, or for such persons as may be the guests of any hotel that such bathing establishments may be connected with. The owner of a bathing house shall not be subject to the provisions of this section when it is used, occupied or maintained by a lessee for hire, but such lessee shall be deemed the keeper or proprietor or person or persons maintaining such bathing establishment thereof. Nothing in this section shall be construed in any way to affect any bathing establishments, in any city or municipality, or any bathing establishments or bathing beaches operated by a regional state park commission, at which there is maintained at public expense a life-saving guard. (Amended by L. 1942, ch. 456.)

§ 313. **Examination and quarantine of children admitted to institutions for orphan, destitute or vagrant children or juvenile delinquents.*** Every institution in this state, incorporated for the express purpose of receiving or caring for orphan, vagrant or destitute children or juvenile delinquents, except hospitals, shall have attached thereto a regular physician of its selection duly licensed under the laws of the state and in good professional standing, whose name and address shall be kept posted conspicuously within such institution near its main entrance. The words "juvenile delinquents" here used shall include all children whose commitment to an institution is authorized by the penal code. The officer of every such institution upon receiving a child therein, by commitment or otherwise, shall, before admitting it to contact with the other inmates, cause it to be examined by such physician, and a written certificate to be given by him, stating whether the child has diphtheria, scarlet fever, measles, whooping cough or any other contagious or infectious disease, especially of the eyes and skin, which might be communicated to other inmates and specifying the physical and mental condition of the child, the presence of any indication of hereditary or other constitutional disease, and any deformity or abnormal condition found upon the examination to exist. No child shall be so admitted until such certificate shall have been furnished, which shall be filed with the commitment or other papers on record in the case, by the officers of the institution, who shall, on receiving such child, place it in strict quarantine thereafter from the other inmates, until discharged from such quarantine by such physician, who shall thereupon indorse upon the certificate the length of quarantine and the date of discharge therefrom.

§ 314. **Monthly examination of inmates and reports.** Such physician shall at least once a month thoroughly examine and inspect the entire institution, and report in writing, in such form as may be approved by the state board of health, to the board of managers or directors of the institution, and to the local board of the district or place where the institution is situated, its condition, especially as to its plumbing, sinks, water-closets, urinals, privies, dormitories, the physical condition of the children, the existence of any contagious or infectious disease, particularly of the eyes or skin, their food, clothing and cleanliness, and whether the officers of the institution have provided proper and sufficient nurses, orderlies, and other attendants of proper capacity to attend to such children, to secure to them due and proper care and attention as to their personal cleanliness and health, with such recommendations for the improvement thereof as he may deem proper. Such boards of health shall immediately investigate any complaint against the management of the institution or of the existence of anything therein dangerous to life or health, and, if proven to be well founded, shall cause the evil to be remedied without delay.

§ 315. **Beds; ventilation.** The beds in every dormitory in such institution shall be separated by a passageway of not less than two feet in width, and

* See Art. II-A.

so arranged that under each the air shall freely circulate and there shall be adequate ventilation of each bed, and such dormitory shall be furnished with such means of ventilation as the local board of health shall prescribe. In every dormitory six hundred cubic feet of air space shall be provided and allowed for each bed or occupant, and no more beds or occupants shall be permitted than are thus provided for, unless free and adequate means of ventilation exist approved by the local board of health, and a special permit in writing therefor be granted by such board, specifying the number of beds or cubic air space which shall, under special circumstances, be allowed, which permit shall be kept conspicuously posted in such dormitory. The physician of the institution shall immediately notify in writing the local board of health and the board of managers or directors of the institution of any violation of any provision of this section.

§ 316. [Unclaimed cadavers; delivery to medical schools; autopsies upon; disposal of remains.]¹ 1. Dissection. The persons having lawful control and management of any hospital, prison, reformatory, asylum, almshouse, morgue or other receptacle for corpses not interred, and every undertaker or other person having in his lawful possession any such corpse for keeping or burial may deliver and he is required to deliver, under the conditions specified in this section, every such corpse in their or his possession, charge, custody or control, not placed therein by relatives in the usual manner for keeping or burial, to the medical colleges, schools or institutes registered by the regents of the university of the state of New York as maintaining a proper standard and universities of the state authorized by law to confer the degree of doctor of medicine and to all other colleges or schools incorporated under the laws of the state for the purpose of teaching medicine, anatomy or surgery to those on whom the degree of doctor of medicine has been conferred, and to any university of the state having a medical preparatory or medical post-graduate course of instruction. No corpse shall be so delivered or received in case the next of kin, within forty-eight hours after death, notifies the person or institution so delivering or receiving the same, that it is desired for interment, or of a person who shall have expressed a desire in his last illness that his body be interred; and in such cases the same shall be buried in the usual manner. Any person claiming any corpse or remains for interment as provided in this section, may be required by the persons, college, school, institute or university or officer or agent thereof, in whose possession, charge or custody the same may be, to present an affidavit stating that he is such relative and the facts and circumstances upon which the claim that he is such relative is based, and that the said relative assumes the cost of burial, the expense of which affidavit shall be paid by the persons requiring it. If such person shall refuse to make such affidavit, such corpse or remains shall not be delivered to him but he shall forfeit his claim and right to the same. Any such medical college, school, institute or university desiring to avail itself of the provisions of this section shall notify such persons having the control and management of the institutions and places heretofore specified, and such undertakers and other persons having any such corpse in their possession, custody or control in the county where such college, school, institute or university is situated, and in any other county in the state in which no medical college, school, institute or university is situated, or in which no such medical college, school, institute or university desires to avail itself of the provisions of this section, of such desire, and thereafter all such persons shall notify the proper officers of such college, school, institute or university whenever there is any corpse in their possession, custody or control, which may be delivered to a medical college, school, institute or university under this section, and shall deliver the same

¹ Section heading inserted by editor.

to such college, school, institute or university. If two or more medical colleges, schools, institutes or universities are entitled to receive corpses, under the provisions of this act and shall have given notice as aforesaid, they shall receive the same in proportion to the number of matriculated students in each college, school, institute or university who are pursuing courses of anatomy and surgery at the time of making the apportionment. The professors and teachers in every college, school, institute or university receiving any corpse under this section shall dispose of the remains thereof, after they have served the purposes of medical science and study in accordance with the regulations of the local board of health where the college, school, institute or university is situated. Every person neglecting to comply with or violating any provision of this section, shall forfeit to the local board of health where such non-compliance or violation occurred, the sum of twenty-five dollars for every such non-compliance or violation, to be sued for by the health officer of such place, and when recovered to be paid over, less the costs and expenses of the action, to such board for its use and benefits.

2. Autopsies. The person having lawful control and management of any hospital in which a patient has died may order the performance of an autopsy upon the corpse, unless objection is made to such autopsy by the next of kin within forty-eight hours after death. In case of unclaimed bodies, the aforementioned medical colleges, schools or universities shall have a priority claim to the bodies, for the purpose of teaching anatomy.

3. Disposal of remains. In all cases in which an autopsy or dissection has been made of an unclaimed body, the provision of article one hundred and ninety-eight of the penal law requiring the burial of a dead body and punishing interference with or injuries to it, shall apply equally to the remains of such body as soon as the lawful purposes of such autopsy or dissection have been accomplished, except that the persons having possession of the dead body may, in their discretion, cause it to be either buried or cremated, or may retain parts of such body for scientific purposes. (Amended by L. 1913, ch. 335, L. 1925, ch. 369, and L. 1939, ch. 377.)

§ 317. **Cadavers in certain counties.** The governors, keepers, wardens, managers, or persons having lawful control and management of any hospital, prison, almshouse, asylum, custodial institution, morgue or other receptacle for corpses not interred, in the counties of Oneida, Onondaga, Oswego, Madison and Cortland, and the warden of the Auburn state prison, in the county of Cayuga, and every undertaker or other person in the counties of Oneida, Onondaga, Oswego, Madison and Cortland, having in his lawful possession any such corpses for keeping or burial, may deliver, and they are hereby required to deliver, under the conditions specified in this section, every such corpse in their or his possession, charge, custody or control, not placed therein by relatives or friends in the usual manner for keeping or burial, to the medical colleges or schools in said counties of Oneida, Onondaga, Oswego, Madison and Cortland, authorized by law to confer either the degree of doctor of medicine, or the degree of doctor of dental surgery and to all other colleges or schools incorporated under the laws of the state in said counties for the purpose of teaching medicine, anatomy or surgery, and to any university in either of said counties having a medical preparatory course of instruction, and the professors and teachers in every such college, school or university may receive such corpses and use the same for the purposes of medical, anatomical or surgical science and study. No such corpse shall be so delivered if within forty-eight hours after death, it is desired for interment by relatives, or by friends, who will bear the expenses of its interment; nor shall a corpse be so delivered or received of any person known to have relatives, whose places of residences are also known, without the assent of such relatives; and such relatives shall be deemed to have assented thereto, unless they shall claim such corpse for the interment within

twenty-four hours after being notified of the death of such person. If the remains of any person so delivered or received shall be subsequently claimed for interment by any relative or by any friend who will bear the expense of such interment, they shall be given up to such relative or friend for interment. Any person claiming any corpse or remains for interment, as provided in this section, may be required by the persons, college, school, university or officer or agent thereof, in whose possession, charge or custody the same may be, to present an affidavit stating that he is such relative or friend, and the facts and circumstances upon which the claim that he is such relative or friend is based, and, if a friend, that he will bear the expense of such interment, the expense of which affidavit shall be paid by the person requiring it. If such person shall refuse to make such affidavit, such corpse or remains shall not be delivered to him, but he shall forfeit his claim and right to the same. Any such college, school or university in either of said counties desiring to avail itself of the provisions of this section shall notify said governors, keepers, wardens, managers, undertakers and other persons hereinbefore specified in the county where said college, school or university is situated, or in any of said adjoining counties, in which no such college, school or university is situated, of such desire, and thereafter it shall be obligatory upon such governors, keepers, wardens, managers, undertakers and other persons hereinbefore specified, to immediately notify the proper officer or officers of said college, school or university, whenever there is any corpse in their possession, charge, custody or control, which may be delivered to a medical college, school or university under this section, and to deliver the same to such college, school or university. It shall be the duty of such governors, keepers, wardens, managers and persons having lawful control and management of the institutions hereinbefore mentioned, after being duly notified by any college, school or university of its desire to avail itself of the provisions of this section, to keep, if requested so to do by such college, school or university, and if provided by such medical college, school or university with a suitable book for that purpose, a true and correct record of any and all corpses thereafter coming into their possession, charge, custody or control, and of the disposition made of the same, giving the names of such corpses, if known; the dates of death and burial, if known; the names and places of residence, if known, of the relatives of such corpses; the names of the persons by whom such corpses are claimed for interment and the names of the colleges, schools, universities or persons, to whom the same are delivered, and the dates of such deliveries; which said books shall be open to the inspection of the officers and agents of such college, school or university furnishing the same and to the officers and agents of any other medical college, school or university entitled to receive corpses from the same county. If two or more colleges, schools or universities located in any one of said counties are entitled to receive corpses from the same or from said adjoining counties, they shall receive the same in proportion to the number of matriculated students in each college. The professors and teachers in every college, school or university receiving any corpse under this section, shall dispose of the remains thereof, after they have served the purposes of medical, anatomical or surgical science and study, in accordance with the regulations of the local board of health where the college, school or university is situated. Any person neglecting to comply with or violating any provision of this section, shall forfeit and pay a penalty of twenty-five dollars for each and every such noncompliance or violation thereof, and it shall be the duty of the health officer, or person performing his duties, in the places where said medical colleges, schools or universities are situated, whenever he shall have knowledge or information of any non-compliance with, or violation of, any provision, or provisions, of this section, to sue for and recover, in his name of office, the aforesaid penalty, and to pay over the

amount so recovered, less the cost and expenses of the action, to the health board of said locality, for its use and benefit. (Amended by L. 1922, ch. 387.)

§ 318. Prescription of opium, morphine, cocaine and chloral. (Repealed by L. 1910, ch. 422.)

318-a. Sale of hypodermic syringes and needles. (Repealed by L. 1940, ch. 415.)

§ 319. Consents requisite to the establishment of hospitals or camps for the treatment of pulmonary tuberculosis.* A hospital, camp or other establishment for the treatment of patients suffering from the disease known as pulmonary tuberculosis, shall not be established in any town by any person, association, corporation or municipality except when authorized as provided by this section. The person, association, corporation or municipality proposing to establish such a hospital, camp or other establishment shall file with the state commissioner of health a petition describing the character thereof, stating the county and town in which it is to be located and describing the site in such town for such proposed hospital, camp or other establishment, and requesting the commissioner to fix a date and place for a hearing on such petition before the state commissioner of health and the local health officer, who shall constitute a board to approve or disapprove the establishment of such hospital, camp or other establishment in accordance with such petition. The state commissioner of health shall fix a date and place for a hearing on such petition, which date shall be not less than thirty nor more than forty days after the receipt thereof. A notice of such hearing specifying the date and place thereof and briefly describing the proposed site for such hospital, camp or other establishment shall be mailed to the person, association, corporation or municipality proposing to establish the same and to the health officer and each member of the board of health of the town in which it is proposed to establish such hospital, camp or other establishment at least twenty days before the hearing, and also published twice in a local newspaper of the town, or if there is no such paper published therein, then in the newspapers of the county designated in pursuance of law to publish the concurrent resolutions. At the time and place fixed for such hearing the state commissioner of health, or his deputy when designated by the commissioner, and the local health officer shall hear the petitioner and any person who desires to be heard in reference to the location of such hospital, camp or other establishment, and they shall within thirty days after the hearing, if they are able to agree, approve or disapprove of the location thereof and shall notify the person, association, corporation or municipality of their determination. At any time after the filing of such petition the state commissioner of health, on the written request of the person, association, corporation or municipality filing such petition, may modify the description of such proposed site as stated in such petition by omitting therefrom any portion of the site so described which he shall determine to be unnecessary for the purposes of such hospital, camp or other establishment. The state commissioner of health shall within thirty days after such determination to modify such description notify the petitioner thereof in writing. The determination of the state commissioner of health, or his deputy as the case may be, and the local health officer shall be final and conclusive; but if within thirty days after the hearing they are unable to agree, they shall within such thirty days notify the person, association, corporation or municipality proposing to establish such hospital, camp or other establishment that they are unable to agree. Within ten days after the receipt of such notice, such person, association, corporation or municipi-

* See County Law, §§ 45-49f; General City Law, § 141; and Public Welfare Law, § 86. Compilation of tuberculosis laws is issued in pamphlet form.

pality may file in the office of the state commissioner of health a request that the petition be referred to a board consisting of the lieutenant-governor, the speaker of the assembly and the state commissioner of health. Such officers shall approve or disapprove of the proposed location of such hospital, camp or other establishment after a hearing of which notice shall be mailed to the person, association, corporation or municipality proposing to establish the same and to the health officer and to each member of the local board of health of the town, or without a hearing, upon the evidence, papers and documents filed with the state commissioner of health or that may be submitted to them, as the board shall determine. They shall make their determination within thirty days after the request for such submission has been filed in the office of the state commissioner of health and cause a copy thereof to be mailed to the person, association, corporation or municipality proposing to establish such hospital, camp or other establishment and to the health officer of the town in which it is proposed to establish the same. Such determination shall be final and conclusive. (Amended by L. 1916, ch. 291, L. 1918, ch. 421, L. 1923, ch. 510, and L. 1926, ch. 186.)

§ 320. Reports of tuberculosis by physicians and others. (Repealed by L. 1936, ch. 237.)

§ 320-a. Reports of children with impaired hearing by physicians and others. It shall be the duty of every attending or consulting physician, nurse, parent or guardian having charge of any minor under six years of age who is totally deaf or whose hearing is impaired to report at once by telephone or in person or in writing the name, age and residence of such minor to the state commissioner of health and to furnish such additional information as the commissioner shall require. If the commissioner, after investigation, finds that such minor is not receiving adequate care and treatment, he shall report the facts relative to such minor to the appropriate welfare or other official or agency which may provide care and treatment. If the case of such minor is referred to a welfare officer, when he has approved the provision of such medical or surgical care and treatment as is needed and which the parent is unable to provide, the cost thereof shall be a charge against the local public welfare district. The state commissioner of health shall in each instance notify the state commissioner of education of his disposition of the case, and the name of the official or agency to which referred. The commissioner of education, when in his judgment it is desirable, shall communicate to the parent, guardian, official or agency the location of the resident schools for the deaf and also the nearest public school having special classes and also instruction for the hard of hearing with information concerning the advantages offered by the school and the benefits to accrue to the child from attendance at such school, classes or instruction. (Added by L. 1936, ch. 856.)

§ 321. Examination of sputum. It shall be the duty of every health officer of a city, town or village, when so requested by any physician, or by authorities of any hospital or dispensary, to make or cause to be made a microscopical examination of the sputum forwarded to him as that of a person having symptoms of tuberculosis, which shall be forwarded to such officer accompanied by a blank giving name, age, sex, color, occupation, place where last employed if known, and address of the person whose sputum it is. It shall be the duty of said health officer promptly to make a report of the results of such examination, free of charge, to the physician or person upon whose application the same is made.

§ 322. Protection of records. It shall be the duty of every health officer of a city, town or village to cause all reports made pursuant to law concerning persons having tuberculosis, and also all results of examinations,

showing the presence of the bacilli of tuberculosis, made in accordance with the provisions of section three hundred and twenty-one, to be recorded in a register, of which he shall be the custodian. Such register shall not be open to inspection by any person other than the health authorities of the state and of the said city, town or village, and said health authorities shall not permit any such report or record to be divulged so as to disclose the identity of the person to whom it relates, except as may be authorized in the sanitary code. (Amended by L. 1913, ch. 559, and L. 1941, ch. 42.)

§ 323. Disinfection of premises.* In case of the vacation of any apartment or premises by the death or removal therefrom of a person having tuberculosis, it shall be the duty of the attending physician, or if there be no such physician, or if such physician be absent, of the owner, lessee, occupant, or other person having charge of the said apartments or premises, to notify the health officer of said city, town or village, of said death or removal within twenty-four hours thereafter, and such apartments or premises so vacated shall not again be occupied until duly disinfected, cleansed or renovated as hereinafter provided.

§ 324. Health officer to direct disinfection, cleansing or renovation.* When notified of the vacation of any apartments or premises as provided in section three hundred and twenty-three thereof, the local health officer or one of his assistants or deputies, shall within twenty-four hours thereafter visit said apartments or premises and shall order and direct that, except for purposes of cleansing or disinfection, no infected article shall be removed therefrom until properly and suitably cleansed or disinfected, and all apartments or premises shall be disinfected, cleansed or renovated in order that they may be rendered safe and suitable for occupancy as prescribed by the sanitary code. If the health authorities determine that disinfection is sufficient to render them safe and suitable for occupancy, such apartments or premises together with all infected articles therein, shall immediately be disinfected by the health authorities at public expense, or provided, however, that in any locality which in the judgment of the state commissioner of health may be considered a resort for persons having tuberculosis, such disinfection may in the discretion of the health authorities be done by such health authorities at the expense of the owner of the premises. Should the health authorities determine that such apartments or premises are in need of thorough cleansing and renovation, a notice in writing to this effect shall be served upon the owner or agent of said apartments or premises, and said owner or agent shall thereupon proceed to the cleansing or renovating of such apartments or premises in accordance with the instructions of the health authorities, and such cleansing and renovation shall be done at the expense of said owner or agent. The public health council shall include in the sanitary code regulations defining the methods and precautions to be observed in disinfecting, cleansing, or renovating premises under the provisions of this section.* In any case in which the owner is liable for the expense of such disinfection, cleansing or renovation by or pursuant to the provisions of this section, such expense if not paid shall be a first lien upon such property, real or personal, so disinfected, cleansed or renovated, having preference over all other liens and incumbrances whatever. If the lien is against real property, it may be foreclosed in the manner prescribed in section thirty-two of the public health law; if the lien is against personal property it may be foreclosed in the manner prescribed in sections two hundred and six to two hundred and nine, inclusive, of the lien law. (Amended by L. 1909, ch. 240, L. 1910, ch. 427, and L. 1913, ch. 559.)

§ 325. Prohibiting occupancy until order of health officer is complied with. In case the orders or directions of the local health officer requiring the

* See § 25 and Sanitary Code.

disinfection, cleansing or renovation of any apartments or premises or any articles therein as hereinbefore provided, shall not be complied with within forty-eight hours after such orders or directions shall be given, the health officer may cause a placard in words and form substantially as follows to be placed upon the door of the infected apartments or premises:

"Tuberculosis is a communicable disease. These apartments have been occupied by a consumptive and may be infected. They must not be occupied until the order of the health officer directing their disinfection or renovation has been complied with. This notice must not be removed under the penalty of the law except by the health officer or other duly authorized official."

§ 326. **Prohibiting carelessness of a person having tuberculosis.** Any person having tuberculosis who shall dispose of his sputum, saliva or other bodily secretion or excretion so as to cause offense or danger to any person or persons occupying the same room or apartment, house, or part of a house, shall on complaint of any person or persons subjected to such offense or danger, be deemed guilty of a nuisance and any persons subjected to such a nuisance may make complaint in person or writing to the health officer of any city, town, or village where the nuisance complained of is committed. And it shall be the duty of the local health officer receiving such complaint to investigate and if it appears that the nuisance complained of is such as to cause offense or danger to any person occupying the same room, apartment, house or part of a house, he shall serve a notice upon the person so complained of, reciting the alleged cause of offense or danger and requiring him to dispose of his sputum, saliva or other bodily secretion or excretion in such a manner as to remove all reasonable cause of offense or danger. Any person failing or refusing to comply with orders or regulations of the local health officer of any city, town or village, requiring him to cease to commit such nuisance, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not more than ten dollars.

§ 326-a. **Control of dangerous and careless patients.** Whenever a complaint shall be made by a physician to a health officer that any person is afflicted with an infectious, contagious or communicable disease or is a carrier* of typhoid fever, tuberculosis, diphtheria or other infectious disease and is unable or unwilling to conduct himself and to live in such a manner as not to expose members of his family or household or other persons with whom he may be associated to danger of infection, the health officer shall forthwith investigate the circumstances alleged. If he shall find that any such person is a menace to others, he shall lodge a complaint against such person with a magistrate, and on such complaint the said person shall be brought before such magistrate.† The magistrate after due notice and a hearing, if satisfied that the complaint of the health officer is well founded and that the person is a source of danger to others, may commit him to a county hospital for tuberculosis or to any other hospital or institution established for the care of persons suffering from any such disease or maintaining a room, ward or wards for such persons. Such person shall be deemed to be committed until discharged in the manner authorized in this section. In making such commitment the magistrate shall make such order for payment for the care and maintenance of such person as he may deem proper. The chief medical officer of the hospital or other institution to which any such person has been committed, upon signing and placing among the permanent records of such hospital or institution a statement to the effect that such person has obeyed the rules and regulations of such hospital or institution for a period of not less than sixty days, and that in his

* See § 36-a; Art. XVII-B; Sanitary Code; and Mental Hygiene Law, §§ 78, 79.

† See Penal Law, § 1750.

judgment such person may be discharged without danger to the health or life of others, or for any other reason stated in full which he may deem adequate and sufficient, may discharge the person so committed. He shall report each such discharge together with a full statement of the reasons therefor at once to the health officer of the city, village or town from which the patient came and at the next meeting of the board of managers or other controlling authority of such hospital or institution. Every person committed under the provisions of this section shall observe all the rules and regulations of such hospital or institution. Any patient so committed who neglects or refuses to obey the rules or regulations of the institution may by direction of the chief medical officer of the institution be placed apart from the other patients and restrained from leaving the institution. Any such patient who wilfully violates the rules and regulations of the institution or repeatedly conducts himself in a disorderly manner may be taken before a magistrate by the order of the chief medical officer of the institution. The chief medical officer may enter a complaint against such person for disorderly conduct and the magistrate, after a hearing and upon due evidence of such disorderly conduct, may commit such person for a period not to exceed six months to any institution to which persons convicted of disorderly conduct or vagrancy or of being tramps may be committed, and such institution shall keep such person separate and apart from the other inmates, provided that nothing in this section shall be construed to prohibit any person committed to any institution under its provisions from appealing to any court having jurisdiction, for a review of the evidence on which commitment was made. (Added by L. 1913, ch. 559.)

§ 327. **Protection of patient's family.** It shall be the duty of a physician attending a patient having tuberculosis to take all proper precautions and to give proper instructions to provide for the safety of all individuals occupying the same house or apartment, and if no physician be attending such patient this duty shall devolve upon the local health officer, and all duties imposed upon physicians by any sections of this article shall be performed by the local health officer in all cases of tuberculosis not attended by a physician, or when the physician fails to perform the duties herein specified, and shall so report.

§ 328. **Providing that physicians shall make a complete statement of procedure and precautions on a blank to be furnished by the health officer.** (Repealed by L. 1939, ch. 231.)

§ 329. **Penalty for failure of physician to perform duties or for making false reports.** Any physician or person practicing as a physician who shall wilfully make any false statement concerning the name, age, sex, color, occupation, place where last employed if known, or address of any person reported as affected with tuberculosis, or who shall certify falsely as to any of the precautions taken to prevent the spread of infection, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be subject to a fine of not more than one hundred dollars. (Amended by L. 1913, ch. 559.)

§ 330. **Reporting recovery of patient.** Upon the recovery of any person having tuberculosis, it shall be the duty of the attending physician to make a report of this fact to the local health officer, who shall record the same in the records of his office, and shall relieve said person from further liability to any requirements imposed by this article.

§ 331. **General penalty.** Any person violating any of the provisions of sections three hundred and twenty* to three hundred and thirty, both inclusive, of this article, shall be deemed guilty of a misdemeanor and upon conviction

* So in original. [Should read twenty-a as twenty was repealed.]

thereof shall be punished, except as in this article otherwise provided, by a fine of not less than five dollars nor more than fifty dollars.

§ 332. **Application of provisions.** No portion of section three hundred and twenty* to three hundred and thirty-one, both inclusive, shall apply to the city of New York, nor shall the passage of said sections modify or repeal any of the provisions of the charter of the city of New York, or any rule or regulation issued by the department of health of said New York city. (Amended by L. 1909, ch. 240.)

§ 333. **Like privileges in hospitals to be granted to matriculated students of medical colleges.** Whenever the managers, governors, or person or persons having lawful control and management over any public hospital in any city or county in this state, shall grant to matriculated students of any legally incorporated medical college in said city or county, privileges of admission to such hospital for hearing clinics or lectures, or receiving medical or surgical instruction therein, the like privileges and advantages shall be granted to the matriculated students in each and all legally incorporated medical colleges in said city and county who may desire the same, without distinction or preference, and upon equal terms and conditions as to all. Nothing in this section shall prevent the managers of hospitals from limiting the attendance of students in such hospitals to a number compatible with the welfare of patients. But in such limitation they shall receive students from such legally incorporated medical colleges applying for such admission in proportion to the number of students in attendance upon such college.

§ 334. **Iron stairways on outside of hospital, sanitarium and certain other buildings.** All hospital buildings used for general hospital purposes, or hospitals as asylums for the insane, or any hospital buildings or buildings maintained, operated or used for the purpose of a sanatorium or a sanitarium, or for boarding or lodging house purposes where three or more persons suffering from or afflicted with or convalescing from any disease or ailment are habitually kept, boarded or housed for hire, which are more than two stories high, other than those which are fireproof in their construction, shall have properly constructed iron stairways on the outside thereof, with suitable doorways leading thereto from each story above the first. It shall be the duty of the trustees, managers, owners, proprietors and lessees of such buildings to cause such stairways to be constructed and maintained. If the trustees, managers, owners, proprietors and lessees of any of the buildings herein described, except those owned and maintained by a city, a county or the state, shall fail to provide such stairways after this section as hereby amended takes effect, then the local authorities shall proceed to erect such stairways and the cost thereof may be recovered by an action at law from the trustees, managers, owners, proprietors or lessees of such buildings.

The district attorney of each county is hereby charged with the execution of this statute, except in the case of buildings erected or maintained by the state, city or by a county.

The provisions of this section shall not apply to any of the buildings above described in any of the cities or counties of this state, which the fire department of said city or where situated outside of a city the district attorney of the county shall certify in writing to be fireproof to an extent which will not require the appliances and fixtures provided for in this section. The certificate exempting such buildings from the operation of this section shall be filed during the month of January in each year in the office of the county clerk of the county.

The maintenance, operation or use of any of the buildings above described by the owner, board of managers or other governing body, in violation of this section, shall in addition constitute a misdemeanor punishable by a fine

* So in original. [Should read twenty-a as twenty was repealed.]

of not exceeding five hundred dollars, or by imprisonment of not more than one year or both. (Amended by L. 1924, ch. 110.)

§ 334-a. **Equipment of asylums, almshouses, hospitals, orphanages and schools with fire alarm boxes.** On or before July first, nineteen hundred thirty, every asylum, almshouse, hospital and orphanage having more than ten inmates, and every public, private and parochial school, in any city, village, town or fire district having a general fire alarm station and an electrically operated fire alarm system, shall be equipped with a fire alarm box or boxes of the type and character used in such city, village, town or fire district, to be located on the premises or in the buildings on such premises, at such places as the chief engineer or other head of the fire department of such a city, town, village or fire district may direct; provided, however, that in the city of New York and in the city of Buffalo the fire commissioner and in the city of Rochester the commissioner of public safety shall have exclusive right and power to determine the necessity of equipping any such asylum, almshouse, hospital, orphanage or school with a suitable fire alarm box or boxes and to order the installation therein of such fire alarm box or boxes, whenever a fire alarm box maintained by the fire department of such city is not located in his judgment within reasonable distance from any such asylum, almshouse, hospital, orphanage or school. The expense of acquiring, installing and maintaining such boxes shall be borne by the person or corporation owning or operating such asylum, almshouse, hospital, orphanage or school, if the same be under private control, and otherwise by the authorities of the municipal corporation, fire or school district having jurisdiction and control thereof. Upon the instalment of such boxes, the fire department or other local authorities having jurisdiction of the general fire alarm system of the city, town, village or fire district shall connect such boxes therewith and such fire department or other authority having jurisdiction, or the agents thereof, may enter every asylum, almshouse, hospital, orphanage or school, equipped with such boxes, at any reasonable time for the purpose of inspection and repair. The failure of a person or a private corporation to equip any asylum, almshouse, hospital, orphanage or school under his or its jurisdiction, as required by this section shall be guilty of a misdemeanor. The chief engineer or other head of the fire department of every city, village, town or fire district having a general fire alarm station and an electrically operated fire alarm system, on or before July first, nineteen hundred and twenty-nine, shall cause a written notice to be served on every person or corporation owning or operating an asylum, almshouse, orphanage or school, under private control, in such city, village, town or fire district to cause the same to be equipped with a fire alarm box or boxes as required by this section. (Formerly § 335; added by L. 1928, ch. 838; amended by L. 1929, chs. 141 and 369, L. 1931, ch. 478; renumbered by L. 1941, ch. 42.)

ARTICLE XVI-A

State tuberculosis hospitals

(Added by L. 1931, ch. 481)

Section 335. [Establishment of district state hospitals.]

336. [Health commissioner to acquire sites.]

337. Herman† M. Biggs Memorial Hospital.

337-a. Homer Folks tuberculosis hospital.

338. Control of state tuberculosis hospitals in the department of health.

† So spelled in original.

- 339. Admission of patients.
- 340. Maintenance of patients.
- 341. Lands.
- 342. Custody of property; application and expenditure.
- 342-a. Superintendents of hospitals.
- 342-b. Qualifications of the superintendent.
- 342-c. Aid to county hospitals.
- 342-d. Powers and duties of the superintendent generally.
- 342-e. Appointment of consulting staff.
- 342-f. Use of laboratory service of municipal and county officials.
- 343. Duties of consulting staff.

§ 335. [Establishment of district state hospitals.]¹ Three state hospitals in suitable localities within the state for the care and treatment of tuberculosis are hereby established under jurisdiction and control of the state department of health, and the commissioner of health shall determine the charge for the care and treatment of patients therein, not greater than the actual cost of such care and treatment, which shall be paid by the county in which the patient resides.

§ 336. [Health commissioner to acquire sites.]¹ Notwithstanding the provisions of any inconsistent, general or special law, the state commissioner of health, with the approval of the governor, shall select and acquire by purchase or condemnation or by appropriation in the manner provided in section ten of this chapter suitable sites for such hospitals, and shall cause to be prepared plans and specifications therefor, and shall proceed to construct and equip such hospitals within the amount appropriated by the legislature therefor.

§ 337. **Herman* M. Biggs Memorial Hospital.** The state tuberculosis hospital, established pursuant to this article and to chapter four hundred and eighty-one of the laws of nineteen hundred and thirty-one, to be located near the city of Ithaca, shall be known as the Herman* M. Biggs Memorial Hospital in honor of the late Herman* M. Biggs, M.D., former health commissioner of the state of New York, in commemoration of his monumental achievements in the prevention and control of tuberculosis and the advancement of public health. (Added by L. 1932, ch. 246.)

§ 337-a. **Homer Folks tuberculosis hospital.** The state tuberculosis hospital, established pursuant to this article and to chapter four hundred and eighty-one of the laws of nineteen hundred and thirty-one, and located adjacent to the city of Oneonta, shall be known as the Homer Folks tuberculosis hospital in honor of Homer Folks, LL.D., in recognition of his long and devoted service in the cause of tuberculosis control, public health and social welfare. (Added by L. 1936, ch. 753.)

§ 338. **Control of state tuberculosis hospitals in the department of health.** Subject to provisions of the state finance law and the constitutional right of visitation and inspection of the state board of social welfare, the state department of health shall have jurisdiction, supervision and control of all state tuberculosis hospitals. (Added by L. 1934, ch. 205.)

§ 339. **Admission of patients.** Patients shall be admitted to state tuberculosis hospitals in accordance with rules established by the state commissioner of health. The state commissioner of health shall from time to time designate the counties to be served by each such hospital, provided, however, that no county which maintains a county tuberculosis hospital shall

¹ Section heading inserted by editor.

* So spelled in original.

hereafter be so designated unless the board of supervisors shall have so requested and any designation of such a county heretofore made shall cease to be effective July first, nineteen hundred forty-two. Any resident of a county thus designated by the state commissioner of health may apply in person to the superintendent of the hospital designated to serve the county in which he lives for admission to such hospital, or he may apply to any reputable physician for examination, and such physician, if he finds that such person is suffering from tuberculosis in any form, may apply to the superintendent of the hospital for his admission. Blank forms for such applications shall be provided by the superintendent and shall be forwarded by him gratuitously to any reputable physician, upon request, in any of the counties served by the hospital.

So far as practicable, applications for admission to the hospital shall be made upon such forms. The superintendent of the hospital, upon the receipt of such application, if it appears therefrom that the patient is suffering from tuberculosis, and if there be a vacancy in such hospital, shall notify the patient named in such application to appear in person at the hospital. If, upon examination of such patient, or of any patient applying in person for admission, the superintendent is satisfied that such person is a suitable case for treatment in such hospital, he shall admit him to the hospital as a patient subject to the rules established by the state commissioner of health. In the case of a patient admitted from one of the designated counties the superintendent shall within forty-eight hours of such admission send a notice to the clerk of the board of supervisors of such county.

The superintendent may admit patients who are able to pay for their care and treatment from any county within the state, but he shall give preference to those residing in the counties designated by the state commissioner of health to be served by such hospital and who are unable to pay in whole or in part for their care and treatment. The superintendent may also admit patients from any public tuberculosis hospital within the state upon the request of the chief medical officer of any such hospital to such state hospital in order to permit such patients to receive special medical or surgical care and treatment that any such hospital is unable to furnish but which is available at such state hospital. (Added by L. 1934, ch. 205; amended by L. 1942, ch. 784.)

§ 340. Maintenance of patients. The state commissioner of health shall fix the rate of maintenance to be charged for each patient, which rate shall not exceed the average daily per capita cost of maintenance of six county tuberculosis hospitals. This cost shall be computed at least once a year from financial data obtained by the state commissioner of health at the time of the annual survey of county tuberculosis hospitals. After the admission of the patient to the hospital the superintendent shall cause an inquiry to be made as to the patient's financial circumstances, and of the relatives of the patient legally liable for his support. If he finds that such patient, or such relatives are able to pay for his care and treatment in whole or in part, an order shall be made for such patient or said relatives to pay to the treasurer of such hospital for the support of such patient a specified sum per week in proportion to their financial ability, but such sum shall not exceed the rate of maintenance fixed by the state commissioner of health. The superintendent shall have the same power and authority to collect such sum from the patient, his estate or his relatives legally liable for his support, as is possessed by a commissioner of public welfare in like circumstances. If the superintendent of the hospital finds that such patient or said relatives are unable to pay, either in whole or in part, for his care and treatment in such hospital the whole amount, or the part which he cannot pay, as the case may be, shall become a charge upon the county from which the patient was admitted. Upon request of the board of supervisors the superintendent

shall send a written statement of his inquiry as to the financial circumstances of the patient and his relatives and the reasons for his decision that the patient or his relatives are unable to pay either in whole or in part for the care and treatment.

At least once in each month there shall be furnished to the clerk of the board of supervisors of each county a list of the patients in the hospital received from such county. Such list shall be accompanied by a bill of necessary charges covering, in addition to the per diem cost, any items of expense of transportation, and the actual cost of necessary articles of clothing furnished by such hospital. The bill therefor shall be audited and paid by the board of supervisors of said county.

After payment for the care and treatment of a patient by the board of supervisors of said county, such county or its board of supervisors may charge back to the county in which a patient may have a settlement the amount of such bill or bills. The county may sue for and collect from the patient, his estate or his relatives legally responsible for his support, any sum paid by said county to the state institution after investigation and determination that said patient, his estate or his relatives legally responsible for his support, are able to pay. (Added by L. 1934, ch. 205; amended by L. 1942, ch. 784.)

§ 341. Lands. The lands to be held for the purposes herein mentioned shall not be taken for any street highway or railway without specific authorization by the legislature. (Added by L. 1934, ch. 205.)

§ 342. Custody of property; application and expenditure. The superintendent, as the agent of the department, may take and hold in trust for the state any grant or devise of land, or any gift or bequest of money, or other personal property, or any donation, to be applied, principal or income, or both to the maintenance and the general use of the hospital. No such property shall be taken or held except with the approval of the state commissioner of health, unless the rules of the commissioner otherwise provide. Utilization and administration of such property so taken and held shall be subject to the rules of the commissioner. The expenditure of moneys derived from any such sources including income therefrom shall be under the immediate direction of the superintendent of the state hospital, unless such rules otherwise provide. (Added by L. 1934, ch. 205.)

§ 342-a. Superintendents of hospitals. There shall be a superintendent of each state hospital appointed by the state commissioner of health. Such position shall be in the competitive class of the civil service. (Added by L. 1934, ch. 205.)

§ 342-b. Qualifications of the superintendent. The superintendent of each state tuberculosis hospital shall be a physician, not a member of the board of consultants, a graduate of a legally chartered medical college, licensed or eligible for licensure in New York state, with administrative experience and experience in the diagnosis, care and treatment of persons suffering from pulmonary tuberculosis. He shall possess such other qualifications as may be prescribed by the state commissioner of health. (Added by L. 1934, ch. 205.)

§ 342-c. Aid to county hospitals. The superintendent of each state tuberculosis hospital, with the approval of the commissioner of health, may give to superintendents of county tuberculosis hospitals and other physicians and medical students courses in the diagnosis and treatment of tuberculosis and in hospital administration. The board and lodging at the hospital of such persons, while actually in attendance at such courses, shall be charged as an expense of conducting such hospitals. (Added by L. 1934, ch. 205.)

§ 342-d. **Powers and duties of the superintendent generally.** Subject to the rules of the state commissioner of health, the superintendent of each state tuberculosis hospital shall have the management of the hospital and shall be responsible for the medical care and treatment of all patients within the hospital. He shall appoint all subordinate officers of the hospital, and they shall be removable by him in accordance with the civil service law and rules. In other respects, the superintendent of the hospital shall have the powers and duties prescribed by law for the superintendent of the hospital under his charge to be exercised and performed, however, subject to rules of the state commissioner of health. Nothing in this chapter shall prevent the adoption by any superintendent of rules pertaining to duties of officers and employees of the state tuberculosis hospital under his charge, and for the internal government, discipline and management of the hospital, consistent with rules of the state commissioner of health, but any such rule of the superintendent shall be subject to revocation or suspension by the state commissioner of health. The superintendent shall be the treasurer of the state tuberculosis hospital. He shall give a bond in such amount as the comptroller may direct. Additional bond or bonds may be required at any time of a superintendent who disburses money accruing from gifts to secure his faithful discharge of that duty. The cost of any such bond shall be paid from funds appropriated to the use of the institution. He shall perform the following duties, subject to the rules and regulations of the state commissioner of health:

1. Receive and have the custody of all moneys of the hospital from whatever source derived, except as otherwise provided by law, and keep an accurate account thereof and have custody of all moneys, securities and obligations belonging to the hospital.

2. Deposit in his name, as treasurer, in a bank approved by the state comptroller, all such moneys and transmit each month to the comptroller and to the commissioner of health, a statement showing the amount received and deposited, from whom and for what received, and when such deposits were made. Such statements of deposit shall be certified by the proper officers of the bank receiving such deposits. The treasurer shall make an affidavit to the effect that the sum so deposited is all the money received by him from any source of hospital income to the date of the last deposit appearing on such statement.

3. Pay out the money deposited for the proper use of the institution upon the voucher of the business manager.

4. Keep full and accurate accounts of all receipts and payments in the manner and according to books and forms prescribed by the state commissioner of health.

5. Balance all accounts on his books annually for the preceding fiscal year, and make a statement thereof and an abstract of the receipts and payments for such year, and transmit the same to the state commissioner of health as soon after the close of the fiscal year as practicable.

6. Render an account of the state of the books and of the funds and property in his custody whenever required by the state commissioner of health.

7. Perform such other duties as the state commissioner of health may require. (Added by L. 1934, ch. 205.)

§ 342-e. **Appointment of consulting staff.** The state commissioner of health shall appoint for each state tuberculosis hospital not more than six physicians or other scientifically trained persons, trained in the various specialties of medicine as a board of consultants. Such consultants shall serve for a period coterminous with the term of the state commissioner of health, unless the commissioner shall deem it in the interest of the state to terminate the appointment of one or more members. In the event of the

resignation or removal by the state commissioner of health the member appointed to fill such vacancy shall hold office as above. (Added by L. 1934, ch. 205.)

§ 342-f. **Use of laboratory service of municipal and county officials.** The superintendent of any state tuberculosis hospital, with the approval of the state commissioner of health, may enter into a contract with proper municipal or county officials under which the laboratory service of the institution may be made available to municipalities or counties or parts thereof when in his judgment such a contract shall be in the interest of public health and not prejudicial to the interest of the institution or its work. He shall receive all moneys paid in consideration of such contract and pay the same into the general fund of the state. (Added by L. 1944, ch. 769.)

§ 343. **Duties of consulting staff.** The duties of each consultant shall be prescribed by the superintendent of each state tuberculosis hospital with the approval of the state commissioner of health. However, at least once each month, in conjunction with the staff of the hospital, the board of consultants shall hold a meeting at which the superintendent shall present scientific or clinical material which he deems advisable for consideration and advice of such board. Failure of any member of such board to attend three consecutive meetings of the board shall cause a vacancy in his office, unless said absence is excused in writing by the commissioner of health. The board, through one of its members designated for such purpose, shall keep a record of attendance and the minutes of each meeting of the board. Copies of each such record shall be transmitted to the superintendent and the commissioner of health within the week immediately following the date of the last meeting. The members of the consulting staff shall not receive any compensation for their services but shall receive actual and necessary traveling and other expenses to be paid after audit as other current expenditures of the hospital. (Added by L. 1934, ch. 205.)

ARTICLE XVII

Cleanliness in the preparation and service of food

(Added by L. 1913, ch. 552, and renumbered Article XVII by L. 1939, ch. 210)

Section 343-a. Cleanliness in the preparation and service of food.

343-b. Powers of the state commissioner of health.

343-c. Penalties.

§ 343-a. **Cleanliness in the preparation and service of food.** A person or corporation engaged in the preparation and sale of food in any hotel, public restaurant, public dining room, dining car, drug store, soda fountain or steamboat in this state or an officer of any public, penal or charitable institution in this state, shall not use in the preparation or service of any food utensils, dishes, glasses or other containers which have not been previously cleansed and disinfected in a sanitary manner. In such cleansing the use of water which has become unsanitary by previous use is prohibited. (Amended by L. 1938, ch. 423, and L. 1939, ch. 167.)

§ 343-b. **Powers of the state commissioner of health.** The state commissioner of health is hereby vested with full power and authority to inspect and supervise all public places in this state above enumerated in which food is prepared, sold or served. Such commissioner or his duly authorized agents or employees shall be permitted access to the kitchens of all hotels, public restaurants, public dining-rooms, dining-cars, drugstores, soda fountains and steamboats in this state and to the kitchens of all public, penal and charitable

institutions in this state for the purpose of ascertaining whether the provisions of this article and of the state sanitary code and local ordinances or regulations are being observed. The state commissioner of health may appoint and designate from time to time persons to make the inspections authorized by this article. (Amended by L. 1939, ch. 167, L. 1939, ch. 210, and L. 1941, ch. 42.)

§ 343-c. **Penalties.** Any person or corporation, or officer thereof, violating any of the provisions of this article shall be guilty of a misdemeanor. The conviction of any corporation shall not relieve any officer or officers, agents or employees of such corporation from prosecution under the provisions of this article.

ARTICLE XVII-A

Suppression of certain nuisances

(Added by L. 1914, ch. 365; repealed, re-enacted, and renumbered by L. 1927, ch. 670)

- Section 343-d. Houses of prostitution; equipment; nuisance; injunction.
 343-e. Injunction; procedure.
 343-f. Jurisdiction and procedure.
 343-g. Owners defined; unknown owner; publication of notice.
 343-h. Temporary restraining order.
 343-i. Writ; how served.
 343-j. Inventory.
 343-k. Mutilation or removal of notice.
 343-l. Trial of action.
 343-m. Scope of injunction.
 343-n. Dismissal.
 343-o. Delay in trial.
 343-p. Costs.
 343-q. Violation of injunction.
 343-r. Procedure.
 343-s. Penalty.
 343-t. Abatement; sale of property; building closed; contempt.
 343-u. Fees.
 343-v. Breaking closed building punished.
 343-w. Duty of district attorney.
 343-x. Proceeds.
 343-y. Release of property on filing bond.
 343-z. Advance payment of fees.
 343-aa. Rule of interpretation.

§ 343-d. **Houses of prostitution; equipment; nuisance; injunction.** Whoever shall erect, establish, continue, maintain, use, own, or lease any building, erection, or place used for the purpose of lewdness, assignation, or prostitution is guilty of a nuisance, and the building, erection, or place, or the ground itself, in or upon which such lewdness, assignation, or prostitution is conducted, permitted, or carried on, continued, or exists, and the furniture, fixtures, musical instruments, and movable property used in conducting or maintaining such nuisance, are also declared a nuisance and shall be enjoined and abated as hereinafter provided. (Formerly 343-a; renumbered and amended by L. 1939, ch. 210.)

§ 343-e. **Injunction; procedure.** When a nuisance is kept, maintained, or exists, as defined in this article, the district attorney, or any citizen of the

county, or any society, association, or body incorporated under the laws of this state, may maintain an action in equity in the name of the people of the state of New York, upon the relation of such district attorney, citizen, or corporation to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same from further conducting or maintaining the same, and the owner, or agent of the building or ground upon which said nuisance exists, from further permitting such building or ground or both to be so used. (Formerly 343-b; renumbered and amended by L. 1939, ch. 210, and L. 1941, ch. 42.)

§ 343-f. **Jurisdiction and procedure.** Such action shall be brought in the supreme court of the county in which the property is situated. The complaint in such action shall be verified and shall set forth the facts constituting the nuisance complained of, and may at or before the commencement of the action be filed in the office of the clerk of the county, together with a notice of the pendency of the action, stating the names of the parties and the object of the action, and containing a brief description of the property, real and personal, in the county affected thereby. Upon the verified complaint and upon such other proof as the court may require, the supreme court, or a justice of the supreme court, may, without a hearing and without notice, grant an injunction order, restraining the defendants and each of them from continuing such nuisance, and from removing, or in any manner interfering with, the furniture, fixtures, musical instruments and movable property used in conducting such nuisance, and described and set forth in the complaint, and in such order fix a time of hearing at a term of the supreme court to be held in such county, for an order continuing such injunction order during the pendency of the action. Such injunction order shall be served, together with a copy of the complaint and the affidavits, if any, upon which the same was granted, personally upon the defendants, or by leaving copies thereof with a person of full age, if any such person be found at the premises described in the complaint, or by posting at or on the main entrance to the bulidng* on such premises, copies thereof, on or before the time fixed for such service in such injunction order. The defendants, or any of them, may upon such hearing submit proof by affidavits, and the plaintiff may submit additional proof by affidavits. If it appears upon such hearing that there is probable proof of the maintenance of such nuisance, the court may continue the injunction order during the pendency of the action. No bond or undertaking shall be required as a condition of granting or continuing such injunction order, or orders. (Formerly § 343-c; amended by L. 1928, ch. 266, L. 1929, ch. 373; renumbered and amended by L. 1939, ch. 210.)

§ 343-g. **Owners defined; unknown owner; publication of notice.** The person in whose name the real estate affected by the action stands on the records in the county clerk's office shall be presumed to be the owner thereof. The owner and any person having any claim or lien against the real or personal property affected by the action may be made parties defendant. If any such persons be unknown to the relator such unknown persons may be designated as "all other persons unknown claiming any ownership, right, title, or interest in the property affected by this action." The summons in such action may be served personally, by substituted service, by publication, service without the state in lieu of publication, or personal service out of the state without order, in the cases provided therefor and in the manner provided therefor in article twenty-five of the civil practice act and in rules of civil practice, except that, in case service by publication is ordered, the mailing of a copy of the order and the summons to the defendant may be dispensed with in the order and the order may provide that such publication

* So in original. [Should read "building."]

in a paper published daily in the city where the property affected by the action is located, two times a week for two weeks, will be sufficient publication, in which case service will be deemed completed upon the date of the last publication; and except that where personal service is made without the state, the service will be deemed completed upon the date of such personal service. (Formerly § 343-d; amended by L. 1928, ch. 266, L. 1929, ch. 373; renumbered and amended by L. 1939, ch. 210.)

§ 343-h. **Temporary restraining order.** Where a permanent or temporary injunction is prayed for, the court, or judge in vacation, on the application of the plaintiff, may issue an ex parte restraining order, restraining the defendants and all other persons from removing or in any manner interfering with the furniture, fixtures, musical instruments and movable property used in conducting the alleged nuisance, until the decision of the court or judge granting or refusing such temporary injunction and until the further order of the court thereon. (Formerly § 343-e; renumbered and amended by L. 1939, ch. 210.)

§ 343-i. **Writ; how served.** The restraining order may be served by handing to and leaving a copy of said order with any person in charge of said property or residing in the premises, and by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances of such premises where such nuisance is alleged to be maintained, or by either such delivery or posting. (Formerly § 343-f; amended by L. 1928, ch. 266; renumbered and amended by L. 1939, ch. 210.)

§ 343-j. **Inventory.** The officers serving such restraining order shall forthwith make and return into court an inventory of the personal property situated in and used in conducting or maintaining said nuisance. (Formerly § 343-g; renumbered and amended by L. 1939, ch. 210.)

§ 343-k. **Mutilation or removal of notice.** Where such order is so posted, mutilation or removal thereof, while the same remains in force, shall be a contempt of court, provided such posted order contains thereon or therein a notice to that effect. (Formerly § 343-h; renumbered and amended by L. 1939, ch. 210.)

§ 343-l. **Trial of action.** The action for the permanent injunction shall be triable at the first term of the supreme court after due and timely notice has been served as in other actions. If the complaint be uncontroverted it shall be deemed true without further proof. In such action evidence of the common fame and general reputation of the place, of the inmates or occupants thereof, or of those resorting thereto, shall be competent evidence to prove the existence of the nuisance. An admission or finding of guilt of any person of a violation of section eleven hundred and forty-six of the penal law at such place shall be presumptive evidence of the nuisance, and a plea of guilty or a conviction in a criminal action of maintaining a nuisance at the place described in the complaint shall be prima facie evidence of the nuisance, and the records of any court in the jurisdiction shall be admissible as evidence to prove the conviction or plea of guilty. If evidence of the general reputation of the place, or of the inmates or occupants thereof, is sufficient to establish the existence of a nuisance it shall be prima facie evidence of knowledge thereof and acquiescence and participation therein and responsibility for the nuisance, on the part of the owners, lessors, lessees, users, and all those in possession of or having charge of, as agent or otherwise, or having any interest in any form of property, real or personal, used in conducting or maintaining said nuisance. (Formerly § 343-i; renumbered and amended by L. 1939, ch. 210.)

§ 343-m. **Scope of injunction.** When an injunction has been granted, it shall be binding on each defendant throughout the state, and any violation of the provisions of the injunction or temporary restraining order herein provided, shall be a contempt and punished as hereinafter provided. (Formerly § 343-j; amended by L. 1928, ch. 266; renumbered and amended by L. 1939, ch. 210.)

§ 343-n. **Dismissal.** If the complaint is filed by a citizen or a corporation, it shall not be dismissed except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal approved by the district attorney in writing or in open court. (Formerly § 343-k; renumbered and amended by L. 1939, ch. 210.)

§ 343-o. **Delay in trial.** If the court is of the opinion that the action ought not to be dismissed, he may direct the district attorney to prosecute said action to judgment, and if the action is continued more than one term of court, except for good cause shown, any citizen of the county or the district attorney may be substituted for the complaining party and prosecute said action to judgment. (Formerly § 343-h; amended by L. 1928, ch. 266; renumbered and amended by L. 1939, ch. 210.)

§ 343-p. **Costs.** If the action is brought by a citizen or a corporation and the court finds there were not reasonable grounds or cause for said action, the costs may be taxed against such citizen or corporation. (Formerly § 343-m; amended by L. 1928, ch. 266; renumbered and amended by L. 1939, ch. 210.)

§ 343-q. **Violation of injunction.** In case of a violation of any injunction granted under the provisions of this article, or of a restraining order or the commission of any contempt of court in proceedings under this article the court, or in vacation a judge thereof, may summarily try and punish the offender. (Formerly § 343-n; renumbered and amended by L. 1939, ch. 210; amended by L. 1941, ch. 42.)

§ 343-r. **Procedure.** The proceedings shall be commenced by filing with the clerk of the court a complaint under oath, setting out and alleging the facts constituting such violation, upon which the court or judge shall cause a warrant to issue, under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may demand the production and oral examination of the witnesses. (Formerly § 343-o; renumbered and amended by L. 1939, ch. 210.)

§ 343-s. **Penalty.** A party found guilty of contempt under the provisions of this article shall be punished by a fine of not less than three hundred nor more than one thousand dollars or by imprisonment for not less than three nor more than six months or by both fine and imprisonment, for the first offense, and for the second and each subsequent offense shall be imprisoned for one year. (Formerly § 343-p; renumbered and amended by L. 1939, ch. 210; amended by L. 1941, ch. 42.)

§ 343-t. **Abatement; sale of property; building closed; contempt.** If the existence of the nuisance be admitted or established in an action as provided in this article, or in a criminal proceeding in any court, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments, or movable property used in conducting the nuisance and shall direct the sale of such in the manner provided for the sale of chattels under execution, and shall direct the effectual closing of the building, erection or place against its use for any purpose, and so

keeping it closed for a period of one year, unless sooner released as hereinafter provided. (Formerly § 343-q; renumbered and amended by L. 1939, ch. 210; amended by L. 1941, ch. 42.)

§ 343-u. **Fees.** For removing and selling the movable property, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property, on execution, and for closing the premises and keeping it closed a reasonable sum shall be allowed by the court. (Formerly § 343-r; renumbered and amended by L. 1939, ch. 210.)

§ 343-v. **Breaking closed building punished.** If any person shall break and enter, or use a building, erection, or place so directed to be closed, he shall be punished as for contempt as provided in this article. (Formerly § 343-s; renumbered and amended by L. 1939, ch. 210; amended by L. 1941, ch. 42.)

§ 343-w. **Duty of district attorney.** In case the existence of such nuisance is established, in a criminal proceeding in a court other than the supreme court it shall be the duty of the district attorney to proceed promptly under this article to enforce the provisions and penalties thereof; and the finding of the defendant guilty in such criminal proceedings, unless reversed or set aside, shall be conclusive as against such defendant as to the existence of the nuisance. (Formerly § 343-t; renumbered and amended by L. 1939, ch. 210; amended by L. 1941, ch. 42.)

§ 343-x. **Proceeds.** All moneys collected under this article shall be paid to the county treasurer. The proceeds of the sale of the personal property as provided in the fourth preceding section, shall be applied in payment of the costs of the action and abatement or so much of such proceeds as may be necessary, except as hereinafter provided. (Formerly § 343-u; renumbered and amended by L. 1939, ch. 210; amended by L. 1941, ch. 42.)

§ 343-y. **Release of property on filing bond.** If the owner of the premises in which said nuisance has been maintained appears and pays all costs of the proceeding and files a bond with sureties to be approved by the court in the full value of the property, to be ascertained by the court, or in vacation by the judge thereof, conditioned that he will immediately abate said nuisance and prevent the same from being established, or kept therein within a period of one year thereafter, the court, or in vacation the judge, if satisfied of his good faith, may order the premises, closed or sought to be closed under the order of abatement, delivered to said owner, and said order of abatement cancelled so far as the same may relate to said real property. The release of the property under the provisions of this section shall not release it from the injunction herein provided against the property nor any of the defendants nor from any judgment, lien, or liability to which it may be subject by law. (Formerly § 343-v; renumbered and amended by L. 1939, ch. 210; amended by L. 1941, ch. 437.)

§ 343-z. **Advance payment of fees.** In an action brought by a citizen or a corporation to enjoin and abate a nuisance, as defined in this act, no officer or witness shall be entitled to receive in advance fees for service or attendance. (Formerly § 343-bb; renumbered 343-ee and amended by L. 1939, ch. 210; renumbered by L. 1941, ch. 437.)

§ 343-aa. **Rule of interpretation.** Should any provision of this act be found to be unconstitutional, such finding shall not invalidate any other provision thereof. (Formerly § 343-cc; renumbered 343-ff and amended 1939, ch. 210; renumbered by L. 1941, ch. 437.)

ARTICLE XVII-B

Regulation of certain contagious diseases

(Added by L. 1918, ch. 264)

- Section 343-gg. Suspected persons.
343-hh. Persons under arrest.
343-ii. Treatment required.
343-jj. Free treatment for infected persons.
343-kk. Treatment only by physicians or on their prescriptions.
343-ll. Reports and information confidential.
343-mm. Penalties.
343-nn. Person, knowing himself to be infected with venereal disease, having sexual intercourse with persons in military or naval service.
343-oo. Definitions.

§ 343-gg. **Suspected persons.** Whenever the board of health or health officer of a health district shall have reasonable ground to believe that any person within the jurisdiction of such board or health officer is suffering from, or infected with, any infectious venereal disease and is likely to infect or to be the source of infection of any other person, such board of health or health officer shall cause a medical examination to be made of such person, for the purpose of ascertaining whether or not such person is in fact suffering from, or infected with, such disease, and every such person shall submit to such examination and permit such specimens of blood or bodily discharges to be taken for laboratory examinations as may be necessary to establish the presence or absence of such disease or infection, and such person may be detained until the results of such examinations are known, provided, that the required examination shall be made by the health officer, or, at the option of the person to be examined, by a licensed physician who, in the opinion of the health officer, is qualified for this work and is approved by him, and such licensed physician making such examination shall report thereon to the board of health, health department or health officer, but shall not issue a certificate of freedom from venereal disease to or for the person examined. Such suspected person may apply to a magistrate for an order restraining such examination and no examination shall then be made except upon order of such magistrate. Before such examination each suspected person shall be informed of this right and be given an opportunity to avail himself or herself thereof. (Amended by L. 1919, ch. 40; renumbered and amended by L. 1939, ch. 210.)

§ 343-hh. **Persons under arrest.** Every person arrested for vagrancy as defined under subdivisions three or four of section eight hundred and eighty-seven of the code of criminal procedure or under section one hundred and fifty of the tenement house law or under any statute or ordinance for any offense of the nature specified in subdivision four of section eight hundred and eighty-seven of the code of criminal procedure, or arrested charged with a violation of section one thousand one hundred and forty-six or one thousand one hundred and forty-eight of the penal law, or any person arrested for frequenting disorderly houses or houses of prostitution, shall be reported within twenty-four hours by the court or magistrate before whom such person is arraigned to the board of health or health officer of the health district in which the alleged offense occurred, and shall be examined in accordance with the provisions of the preceding section. For purpose of examination and diagnosis as provided in the preceding section, such person may be detained until the results of such examination are known. No such person if convicted shall be released from the jurisdiction of such court or magis-

trate until the person so convicted has been examined as provided for in the preceding section. (Amended by L. 1919, ch. 40; renumbered and amended by L. 1939, ch. 210.)

§ 343-ii. **Treatment required.** Every person who, by the examinations as provided for in section three hundred and forty-three-gg, is found to be suffering from, or infected with any venereal disease, or who is reported to the health officer as suffering from or infected with venereal disease, shall be required by the board of health, or the health officer of the health district in which such person resides, to conform to rules and regulations of the state sanitary code, and, in the city of New York of the sanitary code of the board of health of said city. Such rules and regulations may provide for the isolation and treatment of persons so infected and the local board or health officer shall in that case define the place and limits of the area within which such persons shall be isolated, and the conditions under which such isolation and treatment shall be terminated. Any of such rules and regulations may be reviewed in the courts and tested as to reasonableness in a proceeding instituted by any person directed to conform therewith pursuant to this article. (Amended by L. 1931, ch. 481, L. 1935, ch. 587, L. 1939, ch. 210, and L. 1940, ch. 371.)

§ 343-jj. **Free treatment for infected persons.** Any person who is suffering from a venereal disease who is unable to pay for treatment may make application for care and treatment to the board of health or health officer of the health district in which such person resides and such board or health officer shall promptly institute treatment. It shall be the duty of each county and city board of health to provide facilities adequate for the diagnosis, care and treatment of persons suffering from venereal disease, who are unable to pay for treatment by a private physician, which facilities shall meet such standards as may be prescribed by the state commissioner of health. (Amended by L. 1931, ch. 481, and L. 1939, ch. 210.)

§ 343-kk. **Treatment only by physicians or on their prescriptions.** No person, other than a licensed physician, shall treat or prescribe for a case of venereal disease, or dispense or sell a drug, medicine or remedy for the treatment of such a disease except on prescription of a duly licensed physician. Such prescription shall be retained by the person dispensing or selling such drug, medicine or remedy, and no copy of such prescription shall be made by or delivered to any person, and such prescription shall be filled but once. (Renumbered and amended by L. 1939, ch. 210, and L. 1940, ch. 371.)

§ 343-ll. **Reports and information confidential.** All reports or information secured by a board of health or health officer under the provisions of this article shall be absolutely confidential except in so far as is necessary to carry out the purposes of the article. (Renumbered and amended by L. 1939, ch. 210.)

§ 343-mm. **Penalties.** Any person who shall violate any of the provisions of this article or any rule or regulation made and approved under the provisions of section three hundred and forty-three-ii shall be guilty of a misdemeanor. (Renumbered and amended by L. 1939, ch. 210, L. 1941, ch. 42, and L. 1943, ch. 343.)

§ 343-nn. **Person, knowing himself to be infected with venereal disease, having sexual intercourse with persons in military or naval service.** Any person who, knowing himself or herself to be infected with venereal disease, such as chaneroid, gonorrhea or syphilis, in any variations or stages of such diseases, has sexual intercourse with a person in the military or naval service of the state or of the United States shall be guilty of a felony, punishable

by imprisonment for not less than one and one-half years nor more than three years. (Added by L. 1943, ch. 343.)

§ 343-oo. **Definitions.** The term "health district" as used in this article shall mean a city, town, village or consolidated health district having a separate board of health. (Renumbered and amended by L. 1939, ch. 210; renumbered by L. 1943, ch. 343.)

ARTICLE XVIII

State institute for the study of malignant diseases

(Added by L. 1927, ch. 48. Former article repealed by L. 1926, ch. 349)

Section 344. Institute continued.

345. Board of visitors.

346. Investigations and treatment.

347. Administration of gifts and trusts.

348. Director.

349. Division of cancer control. (Repealed.)

§ 344. **Institute continued.** The state institution for the study of malignant diseases is continued under the management and control of the department of health. (Amended by L. 1931, ch. 481, and L. 1944, ch. 298.)

§ 345. **Board of visitors.** There shall continue to be a board of visitors of such institute consisting of the commissioner of health, and six members who shall be appointed by and may be removed at the pleasure of the governor. The members of such board shall serve without compensation. The board of trustees of such institute shall hereafter be and be known as the board of visitors thereof. The present trustees of such institute shall constitute the board of visitors thereof and shall hold office until their successors are appointed and have qualified. Such board of visitors, from time to time, shall visit and inspect such institute. The board shall meet quarterly, and shall hold an annual meeting in November to consider the affairs of the institute and to prepare, for transmission to the commissioner of health, its report of the work of the institute for the preceding year. The board of visitors may meet at any time on call of the chairman, and shall be allowed their necessary traveling expenses in attending the fixed meeting or any special meetings. At least two of the members of the board of visitors shall be residents of the city of Buffalo or vicinity and one of them shall be a member of the medical faculty or of the council of the University of Buffalo.

§ 346. **Investigations and treatment.** The institute shall conduct investigations of the cause, mortality rate, treatment, prevention and cure of cancer and allied diseases. There may be received free of charge in its hospital for study, experimental or other treatment, cases of cancer and allied diseases. The commissioner of health shall publish from time to time the result of its investigations for the benefit of humanity and he shall, from time to time collate its publications in a scientific report for distribution to scientific bodies and to medical scientists and qualified members of the medical profession. The direction of research work in whole or in part toward malignant diseases other than cancer shall not be a violation of the conditions of the grants made pursuant to the provisions of chapter one hundred and twenty-eight of the laws of nineteen hundred and eleven.

§ 347. **Administration of gifts and trusts.** The commissioner of health as the successor of the board of trustees of such institute shall execute and administer any gift, transfer or trust heretofore made to or for the benefit

NOTE.—Communications relating to the work of the Institute should be addressed to Director, State Institute for Study of Malignant Diseases, High Street, Buffalo, N. Y.

of such institute and may receive gifts, legacies and bequests, and use the same for the advancement of the objects and purposes of the institute.

§ 348. **Director.** There shall be a director of the institute who shall be appointed by the commissioner of health with the approval of the board of visitors. In case of disagreement, such director shall be appointed by the governor. The director shall be a trained scientist and shall be in the competitive class of the civil service. The director shall be the executive officer of such institute and be in immediate charge of its work, subject to the supervision and control of the commissioner of health. He shall appoint and remove all members of the staff and all other employees of the institute, subject to the approval of the commissioner of health. He shall annually in the month of January report to the commissioner of health as to his proceedings and the affairs of the institute for the calendar year ending with the preceding thirty-first day of December. (Amended by L. 1939, ch. 168, L. 1941, ch. 42, and L. 1944, ch. 232.)

§ 349. **Division of cancer control.** (Repealed by L. 1944, ch. 298.)

ARTICLE XVIII-A

Cancer control

(Formerly part of Article XVIII)

(Added by L. 1944, ch. 298.)

Section 349. General powers and duties of the commissioner.

§ 349. **General powers and duties of the commissioner.** The commissioner of health shall conduct investigations of the cause, mortality rate, methods of treatment, prevention and cure of cancer, and allied diseases, including the nature and extent of the facilities available in the several counties and cities of the state, for the diagnosis and treatment of these diseases, and shall cooperate with local health authorities, physicians, hospitals, clinics and voluntary associations, in the development of suitable facilities for the diagnosis, treatment and control of cancer.

ARTICLE XIX

State institutions in the department

(Added by L. 1931, ch. 481.)

- Section 350. Control of state institutions in department of health.
351. New York State Reconstruction Home.
352. Admission to institution and charges for service and reimbursement.
353. Qualifications of members of the board of visitors.
354. Custody of property by the board of visitors; application and expenditure.
355. Establishment and objects of New York State Hospital for the Treatment of Incipient Pulmonary Tuberculosis.
356. Admission of patients.
- 356-a. Designation of counties to be served by the tuberculosis hospital at Ray Brook; admission of patients.
357. Qualifications of members of the board of visitors.
358. Lands.
359. Custody of property by the board of visitors; application and expenditure.

- 360. Qualifications of superintendent.
- 361. Aid to county tuberculosis hospitals.
- 362. Appointment and removal of boards of visitors.
- 363. General powers and duties of boards of visitors.
- 364. Superintendents of institutions.
- 365. Powers and duties of the superintendent, generally.
- 365-a. Designation of employees as special policemen; powers and duties.
- 366. Treasurers of institutions; powers and duties.
- 366-a. Use of laboratory service by municipal and county officials.
- 367. Oaths and bonds.
- 368. Admission to institutions.

§ 350. **Control of state institutions in department of health.** Subject to the provisions of the state finance law and the constitutional right of visitation and inspection of the state board of social welfare, the state department of health shall have jurisdiction, supervision and control of the New York State Reconstruction Home at West Haverstraw and the New York State Hospital for the Treatment of Incipient Tuberculosis at Ray Brook. (Amended by L. 1941, ch. 42.)

§ 351. **New York State Reconstruction Home.** The New York State Reconstruction Home at West Haverstraw is continued for the care and treatment of any children who may have resided in the state of New York for a period of not less than one year, who are crippled or deformed or are suffering from diseases from which they are likely to become crippled or deformed. The patients in such home shall be permitted to exercise and enjoy religious profession and worship freely and without discrimination or preference.

§ 352. **Admission to institution and charges for service and reimbursement.** 1. The commissioner of health shall establish regulations governing the admission of patients to the institution. Such patients, however, shall be at the time of their admission under twenty-one years of age and residents of the state. In the case of minors whose parents, or those bound by law to maintain them, are unable to pay the charges provided by this section, admission shall be on the order of the judge of the children's court of a county, or a city maintaining a special children's court authorized by special act of legislature.

2. The commissioner of health shall establish the rates to be paid for the maintenance, care and treatment of all patients admitted to the institution. The commissioner of health shall require that the superintendent of such institution shall render to each county or city or to those responsible for such patient, not oftener than once each month, a verified statement of the amount due for such treatment and maintenance.

3. The charge for the maintenance, care and treatment of minors admitted to the institution by order of a judge of a children's court shall be borne by the county or by the city in which such children's court has jurisdiction or such minor has legal residence. Such county or city shall be entitled to a reimbursement of one-half of the charge of such maintenance, care and treatment of patients admitted by order of the judge of the children's court of such county or city, pursuant to the provisions of sections twelve hundred and eleven and twelve hundred and twelve of the education law.

4. The board of supervisors of such county, at its next meeting for auditing claims against the county, shall audit all such accounts received since the previous meeting for audit and shall cause the amount of such audited accounts to be paid from county funds to the state commissioner of health who shall pay the same into the state treasury pursuant to section thirty-seven of the state finance law.

5. The legislature shall appropriate an amount sufficient to pay one-half of the amount paid by a county or city for the purposes and in the manner provided in this section. The clerk of the board of supervisors of each county or the chief fiscal officer of a city which has expended money for the purposes herein provided shall, not oftener than once in each month, transmit to the commissioner of health a certified statement in the form prescribed by him, stating the amount expended for such purposes, the date of each expenditure and the purpose for which it was made. Upon the receipt of such certified statement the commissioner of health shall examine the same and, if such expenditures were made as required by law, he shall approve it and transmit it to the comptroller for audit. The comptroller shall thereupon issue his warrant in the amount specified in such approved statement for the payment thereof of moneys appropriated therefor to the county treasurer of the county or chief fiscal officer of a city by which such payments were made.

§ 353. **Qualifications of members of the board of visitors.** At least two members of the board of visitors of such home shall be duly licensed physicians and at least two members shall be women. This provision shall not affect the offices of the present members; but appointments hereafter shall be so made as to comply herewith as soon as practicable.

§ 354. **Custody of property by the board of visitors; application and expenditure.** The board of visitors of such home, as the agent of the department, is hereby authorized to take and hold, in the name of and for the people of the state, by grant, gift, devise or bequest, property to be applied for the benefit of the home or of any patient or patients therein. No such property shall be so held or taken except with the approval of the state commissioner of health, unless the rules of the commissioner otherwise provide. Property so taken and held shall be applied or expended, for the purpose specified by the donor, subject to the rules of the commissioner. The expenditure of moneys derived from any such source, including income, shall be under the immediate direction of the treasurer of the home, except as such rules otherwise provide.

§ 355. **Establishment and objects of New York State Hospital for the Treatment of Incipient Pulmonary Tuberculosis.** The New York State Hospital for the Treatment of Incipient Pulmonary Tuberculosis, at Ray Brook, is hereby continued for the care and treatment of persons suffering from incipient pulmonary tuberculosis but no person shall be admitted to this hospital who has not been a resident of the state for at least one year.

§ 356. **Admission of patients.** Patients shall be admitted to the hospital in accordance with rules to be established by the state commissioner of health, but such rules shall provide that preference in the admission of patients shall be given to those unable to pay for their care in private institutions.

At least once in each month the superintendent of the hospital shall furnish to the state comptroller and to the local authorities of each county, city or town, as the case may be, having charge of the relief of the poor, a list of all the free patients in the hospital that were received from said locality during the preceding month. He shall accompany such list with a bill of necessary charges covering items of expense of transportation of patients, fees of the examining physicians, and the actual cost of articles of clothing furnished by the hospital to such free patients at the time of admission which expenses shall be paid to the treasury of the hospital in the same manner as other expenses for the care of the poor are paid. The hospital may receive or collect from patients or persons responsible for the care of such patients moneys in payment wholly or in part for the care and

treatment of such patients in the hospital, subject to rules and regulations established by the department in reference to such payments, and shall transmit any moneys so received to the state treasury.

§ 356-a. Designation of counties to be served by the tuberculosis hospital at Ray Brook; admission of patients. 1. The state commissioner of health is authorized to designate the counties to be served by the New York state hospital for the treatment of incipient pulmonary tuberculosis at Ray Brook for the same type of cases as are now provided for under article sixteen-a of this chapter. Any person who is a resident of a county so designated may apply in person to the superintendent of such hospital for admission, or he may apply to any reputable physician for examination, and if such physician advises that such person is suffering from tuberculosis in any form, the physician may apply to the superintendent of the hospital for the admission of such person thereto. The admission of and payment for expenses of all such patients shall be governed by the provisions of such article and the same rules and regulations of the commissioner as are established from time to time for admission into the other state tuberculosis hospitals referred to in such article.

2. The superintendent may admit patients who are able to pay for their care and treatment from any county within the state, but he shall give preference to patients residing in the counties designated by the state commissioner of health to be served by such hospital and who are unable to pay in whole or in part for their care and treatment. The superintendent also may admit to such state hospital patients from any public tuberculosis hospital within the state upon the request of the chief medical officer thereof, in order to permit such patients to receive the special medical or surgical care and treatment available at such state hospital which such other hospital is unable to provide.

3. The provisions of this section shall not change or affect the present requirements for admission of incipient cases of pulmonary tuberculosis at the New York state hospital for the treatment of incipient pulmonary tuberculosis at Ray Brook. (Added by L. 1938, ch. 628.)

§ 357. Qualifications of members of the board of visitors. At least two members of the board of visitors of such hospital shall be physicians duly licensed by the state of New York.

§ 358. Lands. The lands to be held for the purposes herein mentioned shall not be taken for any street, highway, or railway without leave of the legislature.

§ 359. Custody of property by the board of visitors; application and expenditure. The board of visitors of such hospital, as the agent of the department, may take and hold in trust for the state any grant or devise of land, or any gift or bequest of money or other personal property, or any donation, to be applied, principal or income, or both, to the maintenance and the general uses of the hospital. No such property shall be so taken or held except with the approval of the state commissioner of health, unless the rules of the commissioner otherwise provide. Property so taken and held shall be applied or extended subject to the rules of the commissioner. The expenditure of moneys derived from any such source, including income, shall be under the immediate direction of the treasurer of the hospital, except as such rules otherwise provide.

§ 360. Qualifications of superintendent. The superintendent of the hospital shall be a physician, not a member of the board of visitors, a graduate of a legally chartered medical college, with administrative experience and experience in the diagnosis, care and treatment of persons suffering from pulmonary tuberculosis.

§ 361. **Aid to county tuberculosis hospitals.** The superintendent shall give to superintendents of county tuberculosis hospitals courses in the diagnosis and treatment of tuberculosis and in hospital administration. The board and lodging of such superintendents of county hospitals, while actually in attendance at such courses, shall be charged as an expense of conducting said hospital.

§ 362. **Appointment and removal of boards of visitors.** Subject to the other provisions of this chapter, each of said state institutions shall continue to have a board of seven visitors, to be appointed by the governor by and with the advice and consent of the senate. The terms of office of such visitors shall be seven years, and they shall be so appointed that the terms of at least one of the members of such board shall expire on the first Tuesday of February of each year. All vacancies shall be filled by the governor in the same manner as original appointments, and the person appointed to fill a vacancy in the board of visitors of said institutions shall hold office for the remainder of the term of the person whom he succeeds. The governor may remove any member or members of a board of visitors for cause after an opportunity to be heard. This section shall not abridge the terms of the present members of such boards.

§ 363. **General powers and duties of boards of visitors.** Boards of visitors, with respect to said institutions for which they are respectively appointed, shall have the powers and duties expressly conferred or imposed on them by this chapter and such other powers and duties not inconsistent with law, as may be prescribed by rules of the state commissioner of health. The visitors shall not receive any compensation for their services, but shall receive actual and necessary traveling and other expenses, to be paid after audit as other current expenditures of said institutions. Each such board shall, in October of each year, elect from among its members a president and secretary. The superintendents of said state institutions shall personally submit, at each monthly meeting of its board of visitors, a report showing changes in population, health of inmates, officers and employees; accidents, suicides, unusual sickness, infectious diseases; important occurrences relating to the welfare of the inmates and to the management and discipline of the employees, and such other matters as the board of visitors may specify. Each such board shall:

1. Subject to such rules and the statutory powers of the commissioner, take care of the general interest of the institution and see that its design is carried into effect.

2. Maintain an effective inspection of the institution, for which purpose the board, or a majority of its members, shall visit and inspect the institution at least once each month. Each board shall make a written report to the commissioner and to the governor within ten days after each inspection, such report to be signed by each member making the inspection. Such report shall state in detail the condition of the institution and of its inmates, and such other matters pertaining to the management and affairs thereof as in the opinion of the board of visitors should be brought to the attention of the commissioner of health or the governor, and may contain recommendations as to needed improvement in the institution or in its management. Members of boards of visitors who fail to attend the meetings of their respective boards or fail to make such visitations for three successive months, shall be deemed to have vacated their membership in such boards of visitors, whereupon the governor shall fill the vacancies so created as provided by law, unless the absence of such visitors shall be excused by the governor.

3. Keep in a book provided for that purpose, a fair and full record of their doings, which shall be open at all times to the inspection of the governor or of any person appointed by the governor or by either house of

the legislature, to examine the same, and of the state commissioner of health or his authorized representatives.

4. Hold regular meetings at least once each month, and cause to be typewritten within ten days after each such meeting, the minutes and proceedings of such meeting, and cause a copy thereof, to be sent forthwith to each member of the board of visitors, to the commissioner of health and to the governor.

5. Enter in a book, kept at the institution for that purpose, the date of each visit of each visitor.

6. Make to the state commissioner of health in January of each year, a detailed report of the results of their visits and inspection, with suitable suggestions and such other matters as may be required of them by the state commissioner of health for the year ending on the thirty-first day of December preceding the day of such report. Such report shall be prepared by a committee of the board of visitors, subject to the approval of such board.

7. Investigate, hear and ascertain the truth of all charges made against the superintendent or other officer or employee of the institution, issue subpoenas, take and hear testimony in respect to such charges and make its recommendations thereon to the authority having the power to discharge or remove. A witness attending before such board shall be entitled to the same fees as a witness attending before a court of record or a judge thereof, which shall be paid as other institutional charges. The resident officers shall admit such visitors into every part of the institution and its buildings, and exhibit to them on demand all the books, papers, accounts and writings belonging to the institution, or pertaining to its business, management, discipline or government, and furnish copies, abstracts and reports whenever required by them. (Amended by L. 1939, ch. 168, and L. 1941, ch. 42.)

§ 364. **Superintendents of institutions.** There shall be a superintendent of each said state institution. Such superintendent shall be in the competitive class of the civil service, and shall be appointed by the state commissioner of health, whenever there is a vacancy. Such superintendent shall have the qualifications prescribed by law, or, if no such qualifications be prescribed, such qualifications as may be prescribed by the public health council. Before making the appointment, the commissioner of health shall give notice, by registered mail, to the members of the board of visitors, of his intended action, naming the person whom he proposes to appoint and his place of residence, and shall specify a day, not less than ten days from the mailing of the notice, before which the board of visitors may submit to the state commissioner of health the objections of the board of visitors, if any, to such appointment; and the person named shall not be appointed before such day, except in the case of an express approval by the board of visitors. Superintendents of said institutions now in office are continued in office, subject to removal in the manner provided in this section. The superintendent may be removed by the state commissioner of health for cause stated in writing, after an opportunity has been given the superintendent to be heard thereon, and such action by such commissioner shall be final. The board of visitors, however, shall be notified of any such hearing and its members be given an opportunity to be heard thereat. Pending the investigation by the state commissioner of health or board of visitors of any charges against a superintendent, the commissioner may suspend such superintendent. The state commissioner of health may prefer charges of misconduct or incompetency against any superintendent to the board of visitors, and the board of visitors shall thereupon investigate the truth of such charges and make its recommendations thereon to the commissioner or the commissioner may investigate, or cause the head of a division to investigate any charges of like nature made to the commissioner, and for that purpose the investigating authority may subpoena witnesses and take and hear testimony.

§ 365. **Powers and duties of the superintendent, generally.** Subject to rules of the state commissioner of health, the superintendent of each such state institution shall have the management of the institution and, except as otherwise provided with respect to the treasurer, shall appoint all subordinate officers of the institution; and they shall be removable by him in accordance with the civil service law and rules. In other respects, the superintendent shall have the powers and duties prescribed by law for the superintendent of the institution under his charge, to be exercised and performed, however, subject to rules of the state commissioner of health. Nothing in this chapter shall prevent the adoption by any superintendent of rules pertaining to duties of officers and employees of the institution under his charge or for the internal government, discipline and management of the institution, consistent with rules of the state commissioner of health, but any such rule of the superintendent shall be subject to revocation or suspension by the state commissioner of health.

§ 365-a. **Designation of employees as special policemen; powers and duties.** The superintendent of each state institution in the department may designate attendants or other employees to act as special policemen whose duty it shall be under the orders of the superintendent to fully protect the grounds, buildings and patients of the institution and to eject therefrom disorderly persons. Such attendants and employees, acting as policemen, shall possess all the powers of peace officers on the grounds and premises and to the extent of one hundred yards beyond such grounds. The designation of such attendants and employees as special policemen, in pursuance hereof, shall not be deemed to supersede, on the grounds and premises of such institution, the authority of peace officers of the jurisdiction within which such institution is located. (Added by L. 1940, ch. 106.)

§ 366. **Treasurers of institutions; powers and duties.** Each such state institution shall have a treasurer. The state commissioner of health may appoint such an officer for such institutions, but the superintendent of an institution shall be its treasurer if such an appointment is not made, or pending an appointment to fill a vacancy, and he shall perform the duties of treasurer during the absence or disability of the person, if any, so appointed. Subject to rules and regulations of such state commissioner of health, the treasurer shall,

1. Receive and have the custody of all moneys of the institution from whatever sources derived, except as otherwise provided in this chapter, and keep an accurate account thereof and have custody of all moneys, securities and obligations belonging to the institution.

2. Deposit in his name as treasurer, in a bank approved by the comptroller, all such moneys, and transmit each month to the comptroller, to the division of standards and purchase in the executive department and to the state commissioner of health, a statement showing the amount received and deposited, from whom and for what received and when such deposits were made. Such statement of deposits shall be certified by the proper officer of the bank receiving such deposits. The treasurer shall make an affidavit to the effect that the sum so deposited is all the money received by him from any source of institution income to the date of the last deposit appearing on such statement.

3. Pay out the money deposited for the uses of the institution upon the voucher of the steward. Where the treasurer is a person other than the superintendent, said voucher shall be countersigned by the superintendent.

4. Keep full and accurate account of all receipts and payments in the manner and according to books and forms prescribed by the state commissioner of health.

5. Balance all accounts on his books annually, for the preceding fiscal year, and make a statement thereof and an abstract of the receipts and payments for such year and transmit the same to the state commissioner of health on or before the following fifteenth day of August.

6. Render an account of the state of the books and of the funds and property in his custody, whenever required by the state commissioner of health.

7. Perform such other duties as the state commissioner of health may require.

§ 366-a. **Use of laboratory service by municipal and county officials.** Subject to the approval of the state commissioner of health, the superintendent of any such state institution may enter into a contract with proper municipal or county officials under which the laboratory service of such institution may be made available to municipalities or counties or parts thereof when in his judgment such a contract will be in the interest of public health and not prejudicial to the interest of the institution or its works. The treasurer of such institution shall receive all moneys paid in consideration of such contract and pay the same into the general fund of the state. (Added by L. 1944, ch. 769.)

§ 367. **Oaths and bonds.** Each visitor, superintendent and treasurer of such state institutions shall take the constitutional oath of office. The treasurer of each such institution shall give a bond in such amount as the comptroller may direct. An additional bond or bonds may be required at any time of a treasurer who disburses money accruing from gifts to secure his faithful discharge of that duty. The costs of any such bond shall be paid from funds appropriated to the use of the institution.

§ 368. **Admission to institutions.** Subject to the provisions of this chapter relative to the said state institutions the department may establish rules and regulations governing the admission of inmates to such institutions. If in the judgment of its superintendent the number of inmates of any such institution at any time so far exceeds its proper capacity that suitable care, training or discipline cannot be given to additional inmates, or for other reasons the admission of such additional inmates, is impracticable, the state commissioner of health, in his discretion, may suspend the admission of inmates to such institution until such time as they may properly be admitted.

The commissioner of health shall promptly notify courts and other public officers empowered to commit persons to such institutions of any such suspension of admission and of its termination. A person committed to such institution before the court receives notice of such a suspension may be recommitted to another institution to which he or she might have been lawfully committed in the first instance.

In the admission of inmates to the said state institutions the several counties and the city of New York shall, so far as practicable, be entitled to have in such institutions inmates in the ratio which their respective populations bear to the population of the state as ascertained by the latest federal census.

ARTICLE XX

Vital statistics

(Added by L. 1913, ch. 619)

Section 370. Registration of births and deaths;† duties of state department of health.

371. Duties of state commissioner of health as to vital statistics.

† See Domestic Relations Law for marriages.

- 372. Registration districts.
- 373. Registrar of vital statistics.
- 374. Correction of defective registration.
- 375. Permits for burial or removal of dead bodies.
- 376. Registration of stillborn children.
- 377. Certificate of death.
- 378. Registration of deaths occurring without medical attendance.
- 379. Duties of undertaker.
- 380. Duties of undertakers; interment within the state.
- 381. Interments.
- 382. Registration of births.
- 383. Certificate of birth.
- 383-a. [Certificate; statement as to blood test.]
- 384. Registration of name of child subsequent to filing of birth certificate.
- 385. Registration of physicians, midwives, and undertakers.
- 386. Registration of persons in institutions.
- 387. Records to be kept by state commissioner of health.
- 388. Certified copies of birth certificates evidence of age.
- 389. District records to be kept by registrar.
- 390. Fees of registrar for the prompt and correct return and filing of birth and death certificates.
- 391. Certified copies of records; certifications of birth; state commissioner of health to furnish.
- 391-a. Refund of fees.
- 392. Penalties.
- 393. Enforcement.
- 394. Exemptions.

§ 370. **Registration of births and deaths; duties of state department of health.** The state department of health shall have charge of the registration of births and deaths, shall provide the necessary instructions, forms and blanks for obtaining and preserving such records, and shall procure the faithful registration of the same in each primary registration district as constituted by this article and in the division of vital statistics at the capital of the state. The said department shall be charged with the uniform and thorough enforcement of this article throughout the state and shall from time to time recommend any additional legislation that may be necessary for this purpose. The public health council may establish such rules and regulations supplementary to the provisions of this article and not inconsistent therewith, as it may deem necessary from time to time, in relation to the registration of births and deaths. Such rules and regulations shall be observed by all authorities upon whom duties are imposed by this article in connection with the registration of births and deaths.

§ 371. **Duties of state commissioner of health as to vital statistics.** The state commissioner of health shall have general supervision of vital statistics. Offices shall be provided which shall be suitably equipped for the permanent and safe preservation of all records received or made under the provisions of this article. (Amended by L. 1944, ch. 298.)

§ 372. **Registration districts.** The state shall be divided into registration districts as follows: Each city, each incorporated village, and each town, shall constitute a primary registration district, provided that the state commissioner of health may combine two or more primary registration districts or divide one registration district into two or more primary districts to facilitate registration and he may establish any state hospital, charitable, or

penal institution as a primary district. When a district is divided into two or more primary registration districts, the appointment of a registrar for each shall be made by the same appointing authority which had jurisdiction over the original district, excepting in the instance of a state hospital, charitable, or penal institution, the registrar for which shall be the superintendent or person in charge as provided in section three hundred and seventy-three of this chapter. When two or more primary districts are combined, the registrar for such combined district shall be appointed at a joint session of the authorities which heretofore made the appointment of registrars of the original districts.

Remuneration and expenses of the registrars of districts which have been divided into two or more primary registration districts shall be paid by the municipality comprising the original district, except that the registrar of a state hospital, charitable, or penal institution shall receive no additional remuneration for acting as registrar.

Remuneration and expenses of registrars of combined districts shall be paid by the municipalities comprising such districts in proportion as each would be required to compensate a separate registrar for its own district, except that when such combined districts coincide with a consolidated health district the remuneration and expenses of the registrar shall be paid by the consolidated health board of such district as provided by section twenty of chapter three of the public health law. (Amended by L. 1917, ch. 321, L. 1919, ch. 213, and L. 1925, ch. 367.)

§ 373. **Registrar of vital statistics.** In each primary registration district there shall be a registrar of vital statistics. Qualifications of registrars of vital statistics hereafter appointed may be prescribed by the public health council, and no licensed undertaker, or licensed embalmer, and no person employed in the business of embalming or undertaking, shall be eligible for appointment as a registrar of vital statistics, deputy registrar or subregistrar. A local health officer shall be eligible for appointment as registrar of vital statistics and if so appointed he shall serve as registrar of vital statistics without additional remuneration therefor. In towns and villages the registrar or registrars of vital statistics shall be appointed by the town board and by the village board of trustees respectively; a local town clerk shall be eligible for appointment as registrar of his town and of any village wholly within said town in which he has an office, and a village clerk shall be eligible for appointment as registrar of his village and of any town in which he resides; in the cities, unless otherwise provided by the charter, the registrar or registrars of vital statistics shall be appointed by the mayor. In each primary registration district consisting of a state hospital, charitable or penal institution, the registrar shall be the superintendent or person in charge of such institution, provided, however, that he shall receive no additional remuneration for acting as such registrar. The term of office of a registrar of vital statistics, unless the charter of the city or village shall provide otherwise, shall be four years, except that in a town or village of the first class operating under the general town or village law the term of office of registrar of vital statistics shall be coterminous with the term of office of the town or village clerk, as the case may be. Each registrar of vital statistics shall hold office until his successor shall have been appointed and shall have qualified. Any registrar of vital statistics who in the judgment of the state commissioner of health fails or neglects to discharge efficiently the duties of his office as set forth in this article, or to make prompt and complete returns of births and deaths as required thereby, shall be forthwith removed by the state commissioner of health, and such other penalties may be imposed as are provided by this article. Each registrar of vital statistics shall immediately upon his acceptance of appointment as such, appoint a deputy whose duty it shall be to act in his stead in case of his

absence or inability and such deputy shall in writing accept such appointment and be subject to all rules and regulations governing registrars. When it appears necessary for the convenience of the people in any district, the registrar is authorized, with the approval of the state commissioner of health, to appoint one or more suitable persons to act as subregistrars, who shall be authorized to receive birth and death certificates and to issue burial or removal permits in and for such portions of the district as may be designated, and each such subregistrar shall note on each certificate over his signature the date of filing and shall forward all certificates to the local registrar of the district within three days, and in all cases before the third day of the following month; provided, however, that each such subregistrar shall be subject to the supervision and control of the state commissioner of health and may be by him removed for neglect or failure to perform his duty in accordance with the provisions of this act or the regulations of the public health council, and shall be subject to the same penalties for neglect of duty as the local registrar.

The registrar, deputy registrar or subregistrar of vital statistics in any town shall be appointed by the town board, which may also provide either that the compensation shall be the fees provided by this article or stipulate a daily, monthly or annual salary. If a stipulated salary is fixed all fees collected by them in the discharge of their duties shall be the property of the town and be paid to the supervisor. (Amended by L. 1917, ch. 321, L. 1919, ch. 213, L. 1923, ch. 487, L. 1930, ch. 569, L. 1937, ch. 217, L. 1939, ch. 129, L. 1942, ch. 815, L. 1943, ch. 555, and L. 1944, ch. 303, effective January 1, 1945.)

§ 374. **Correction of defective registration.** If defects be found in the registration under the supervision of a registrar of vital statistics, the state commissioner of health shall notify such registrar that such defects must be corrected within ten days of the date of the notice. If such defects are not so corrected the state commissioner of health shall take control of such registration and of the records thereof, and enforce the rules and regulations in regard thereto and secure a complete registration in such district, and such control shall continue until the registrar of vital statistics shall satisfy the commissioner of health that he will make such record and registry complete as required by law and by the rules and regulations of the public health council. The expenses incurred by the state commissioner of health or his authorized representative while in control of such registration shall be a charge upon the city, town or village comprising the registration district.

§ 375. **Permits for burial or removal of dead bodies.** The body of any person whose death occurs in this state or which shall be found dead therein shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of or removed from or into any registration district, or be temporarily held pending further disposition more than seventy-two hours after death, unless a permit for burial, removal, or other disposition thereof shall have been properly issued by the registrar of vital statistics of the registration district in which the death occurred or the body was found. No such burial or removal permit shall be issued by any registrar until, wherever practicable, a complete and satisfactory certificate of death has been filed with him as heretofore provided; except, however, that verbal permission to remove a body from or into a registration district within the state of New York may where circumstances require it be issued by the said registrar of vital statistics upon request by telephone of a licensed undertaker who holds a certificate of death signed by the attending physician or the health officer showing the death resulted from natural causes, and was not a result of accidental, suicidal, homicidal or other external causes. If it is not possible for the undertaker to communicate with the registrar by telephone,

verbal permission to remove a dead body under the same conditions as those prescribed for the registrar may be issued by the state commissioner of health or person authorized by him. When a dead body is transported from outside of the state into a registration district in this state for burial, the transit or removal permit issued in accordance with the law and health regulations of the place where the death occurred shall be given the same force and effect as the burial permit herein provided for. No registrar of vital statistics shall receive any fee for the issuance of burial or removal permits under this act other than the compensation provided in this article. Provided, however, that the state commissioner of health shall have power to promulgate rules with reference to the removal of bodies of persons whose deaths occur on trains, boats or other carriers engaged in the transportation of persons within this state. (Amended by L. 1932, ch. 267, L. 1938, ch. 466, and L. 1943, ch. 176.)

§ 376. **Registration of stillborn children.** A stillborn child shall be registered as a birth and also as a death, provided, that a certificate shall not be required for a stillborn child whose period of uterogestation is less than five months. The state commissioner of health shall furnish a combined birth and death certificate for the recording of stillbirths to be used instead of the separate birth and death certificates. The medical certificate of the cause of death shall be signed by the attending physician, if any, and shall state the cause of death as "stillborn," with the cause of the stillbirth, if known, whether a premature birth, and, if born prematurely, the period of uterogestation, in months, if known, and a burial or removal permit of the prescribed form shall be required. Midwives shall not sign certificates of death for stillborn children; but such cases, and stillbirths occurring without attendance of either physician or midwife shall be treated as deaths without medical attendance, as hereinafter provided in this article. (Amended by L. 1925, ch. 367, L. 1930, ch. 569, L. 1936, ch. 263, and L. 1943, ch. 14.)

§ 377. **Certificate of death.** The certificate of death shall contain such information and in such form as the state commissioner of health may prescribe.

The personal particulars called for shall be authenticated by the signature of the informant who may be any competent person acquainted with the facts. The statement of facts relating to the disposition of the body shall be signed by the undertaker or person in charge of the corpse.

The medical certificate shall be made, dated and signed by the physician, if any, last in attendance on the deceased. Indefinite terms, denoting only symptoms of disease or conditions resulting from disease, shall not be held sufficient for the issuance of a burial or removal permit. Any certificate stating the cause of death in terms which the state commissioner of health shall have declared indefinite, shall be returned to the physician or person making the medical certificate for correction and more definite statement. (Amended by L. 1930, ch. 569.)

§ 378. **Registration of deaths occurring without medical attendance.** In case of any death occurring without medical attendance, it shall be the duty of the undertaker or other person to whose knowledge the death may come to notify the local health officer of such death, and when so notified the health officer shall immediately investigate and certify as to the cause of death; provided that if the health officer has reason to believe that the death may have been due to unlawful act or neglect he shall then refer the case to the coroner or other proper officer for his investigation and certification. The coroner or other proper officer whose duty it is to hold an inquest on the body of a deceased person, and to make the certificate of death required for a burial permit, shall state in his certificate the name

of the disease causing death, or if from external causes, the means of death; whether probably accidental, suicidal or homicidal; and shall, in any case, furnish such information as may be required by the state commissioner of health in order properly to classify the death.

§ 379. **Duties of undertaker.** In each case the undertaker, or person having charge of the corpse, shall file the certificate of death with the registrar of the district in which the death occurred and obtain a burial or removal permit prior to any disposition of the body. He shall obtain the required personal and statistical particulars from a person qualified to supply them, over the signature and address of his informant. He shall then present the certificate to the attending physician, who shall forthwith fill out and sign the medical certificate of death, or to the health officer or coroner, for the medical certificate of the cause of death and other particulars necessary to complete the record for the registration of deaths, as specified in this article, if no physician was in attendance upon the deceased. He shall then state the facts required relative to the date and place of burial, cremation or removal, over his signature and with his address, and present the completed certificate to the registrar in order to obtain a permit for burial, removal or other disposition of the body. The undertaker shall deliver the burial permit to the person in charge of the place of burial, before interring or otherwise disposing of the body; or shall attach the removal permit to the box containing the corpse, when shipped by any transportation company; said permit to accompany the corpse to its destination, where if within the state of New York, it shall be delivered to the person in charge of the place of burial.

§ 380. **Duties of undertakers; interment within the state.** If the interment, or other disposition of the body is to be made within the state, the wording of the burial or removal permit may be limited to a statement by the registrar, and over his signature, that a satisfactory certificate of death, having been filed with him, as required by law, permission is granted to inter, remove or dispose otherwise of the body, stating the name, age, sex, cause of death, and other necessary details upon the form prescribed by the commissioner of health.

§ 381. **Interments.** No person in charge of any premises on which interments or cremations are made shall inter or permit the interment or other disposition of any body unless it is accompanied by a burial, cremation or transit permit, as herein provided. Such person shall endorse upon the permit, the date of interment, or cremation over his signature, and shall return all permits so endorsed to the registrar of his district within seven days from the date of interment or cremation. He shall keep a record of all bodies interred or otherwise disposed of on the premises under his charge, in each case stating the name of each deceased person, place of death, date of burial or disposal, and name and address of the undertaker; which record shall at all times be open to official inspection; provided that the undertaker or person having charge of the corpse, when burying a body in a cemetery or burial ground having no person in charge, shall sign the burial or removal permit, giving the date of burial, and shall write across the face of the permit the words "No person in charge," and file the burial or removal permit within three days with the registrar of the district in which the cemetery is located.

§ 382. **Registration of births.** The birth of each and every child born in this state shall be registered within five days after the date of birth by filing with the registrar of the district in which the birth occurred a certificate of such birth, which certificate shall be upon the form prescribed therefor by the state commissioner of health. In each case where a physi-

cian, midwife or person acting as midwife, was in attendance upon the birth, it shall be the duty of such physician, midwife or person acting as midwife, to file said certificate. In each case where there was no physician, midwife, or person acting as midwife, in attendance upon the birth, it shall be the duty of the father or mother of the child, the householder or owner of the premises where the birth occurred, or the manager or superintendent of the public or private institution where the birth occurred, each in the order named, within five days after the date of such birth, to report to the local registrar the fact of such birth. In such case and in case the physician, midwife or person acting as midwife in attendance upon the birth is unable, by diligent inquiry, to obtain any item or items of information required in this article, it shall then be the duty of the registrar to secure from the person so reporting, or from any other person having the required knowledge, such information as will enable him to prepare the certificate of birth herein required, and it shall be the duty of the person reporting the birth or who will be interrogated in relation thereto to answer correctly and to the best of his knowledge all questions put to him by the registrar which may be calculated to elicit any information needed to make a complete record of the birth as contemplated by this article, and it shall be the duty of the informant as to any statement made in accordance herewith to verify such statement by his signature, when requested so to do by the local registrar.

The report of the finding of a child whose parents are unknown, filed by the commissioner of public welfare or by the city public welfare officer in accordance with the provisions of subdivision two of section three hundred ninety-eight of the social welfare law, shall constitute the birth record of such child. The district wherein such child was found shall be considered as the place of birth, and the date of birth shall be that determined by the commissioner of public welfare or by the city public welfare officer as the approximate date of birth. Provided, that if such child be subsequently identified, and it should appear that a certificate of birth for this child has either before or following identification been filed, as otherwise provided in this article, the report of the commissioner of public welfare or of the city public welfare officer shall be placed under seal by the state commissioner of health, such seal not to be broken except upon order of a court of competent jurisdiction. (Amended by L. 1937, ch. 391, and L. 1941, ch. 172.)

§ 383. **Certificate of birth.** The certificate of birth shall contain such information and be in such form as the state commissioner of health may prescribe. There shall be no specific statement on the birth certificate as to whether the child is born in wedlock or out of wedlock or as to the marital name or status of the mother.

The personal particulars called for shall be obtained from a competent person acquainted with the facts. If the child dies without a given name, there shall be entered in the space provided for the name the words "died unnamed." If the living child has not yet been named at the date of filing the certificate of birth, the space for the given name of the child is to be left blank, to be filled out subsequently by a supplemental report, as hereinafter provided.

The name of the putative father of a child born out of wedlock shall not be entered without his consent but the other particulars relating to the putative father may be entered.

The certificate shall be signed by the attending physician or midwife, with date of signature and address; if there was no physician or midwife in attendance, then by the father or mother of the child, householder, owner of the premises, manager or superintendent of public or private institution where the birth occurred, or other competent person whose duty it shall be to notify the local registrar of such birth.

The registrar shall enter the exact date of filing of the certificate in his office attested by his official signature and registered number of birth. (Amended by L. 1930, ch. 569, L. 1935, ch. 125, and L. 1936, ch. 854.)

§ 383-a. [Certificate; statement as to blood test.]* In reporting every birth and stillbirth, physicians and others permitted to attend pregnancy cases and required to report births and stillbirths shall state on the birth certificate or stillbirth certificate, as the case may be, whether a blood test for syphilis has been made during such pregnancy upon a specimen of blood taken from the woman who bore the child for which a birth or stillbirth certificate is filed. If such test has been made during pregnancy, those required to report births and stillbirths shall state the date on which the test was made. In addition to the information provided to be contained in each certificate of birth by section three hundred eighty-three of this chapter, every certificate of birth shall state whether such test was made during pregnancy or at delivery and in the case where no blood test has been made such fact shall be reported together with the reason why such test has not been taken in compliance with the provisions of section eighteen-d of this chapter. In no event shall the birth certificate state the result of the test. (Added by L. 1938, ch. 133; amended by L. 1939, ch. 439.)

§ 384. Registration of name of child subsequent to filing of birth certificate. When any certificate of birth of a living child is presented without the statement of the given name, the local registrar shall make out and deliver to the parents of the child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed, and returned to the local registrar as soon as the child shall have been named. The given name, supplied by the supplemental report, shall be entered on the original birth certificate. (Amended by L. 1935, ch. 125.)

§ 385. Registration of physicians, midwives, and undertakers. Every physician, midwife and undertaker shall, on or before the day on which this article takes effect, register his or her name, address and occupation with the registrar of the district in which he or she resides, and shall so register in any district in which he or she may hereafter establish a residence or maintain an office; and shall thereupon be supplied by the registrar with a copy of this article together with such rules and regulation as may be prepared by the public health council relative to its enforcement. No fee or other compensation shall be charged by registrars to physicians, midwives or undertakers for registering their names as provided by this section. (Amended by L. 1925, ch. 367, and L. 1943, ch. 54.)

§ 386. Registration of persons in institutions. All superintendents or managers or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of diseases or confinement, or to which persons are committed by process of law, shall make a record of all the personal and statistical particulars relative to the inmates in their institutions when this act takes effect; which are required in the forms of the certificate provided for by this article as directed by the state commissioner of health; and thereafter such record shall be by them made for all future inmates at the time of their admittance. In the case of persons admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record, the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself if it is practicable to do so; and when they cannot be

* Section heading inserted by editor.

so obtained, they shall be obtained in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts.

§ 387. **Records to be kept by state commissioner of health.** The state commissioner of health shall prepare, print, and supply to all registrars all blanks and forms used in registering, recording and preserving the returns, or in otherwise carrying out the purposes of this article, and shall prepare and issue such detailed instructions, not inconsistent with the regulations established by the public health council, as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other blanks shall be used than those supplied by the state commissioner of health. He shall carefully examine the certificates received monthly from the registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. All physicians, midwives, undertakers or informants, and all other persons having knowledge of the facts, are hereby required to supply, upon a form provided by the state commissioner of health or upon the original certificate, such information as they may possess regarding any birth or death upon demand of the state commissioner of health, in person, by mail, or through the registrar; provided that no certificate of birth or death, after its acceptance for registration by the registrar, and no other record made in pursuance of this article, shall be altered or changed in any respect otherwise than by amendments properly dated, signed and witnessed.

A new certificate of birth shall be made whenever: (a) proof is submitted to the state commissioner of health that the previously unwed parents of a person have intermarried subsequent to the birth of such person; (b) notification is received by or proper proof is submitted to the state commissioner of health by the clerk of a court of competent jurisdiction or the parents, or their attorneys, or the person himself, of a judgment, order or decree relating to the parentage or adoption of such person regardless of the place of birth of such person.

On every new certificate of birth made because of adoption a notation "by adoption" shall be entered.

When a new certificate of birth is made the state commissioner of health shall substitute such new certificate for the certificate of birth then on file, if any, and shall notify the registrar of the district in which the birth occurred that a new certificate of birth has been made and such fact shall be noted on the copy of the certificate of birth there on file, if any. The state commissioner of health shall place the original certificate of birth and all papers pertaining to the new certificate of birth under seal. Such seals shall not be broken except by order of a court of competent jurisdiction. Thereafter when a certified copy of the certificate of birth of such a person is issued, it shall be a copy of the new certificate of birth, except when an order of a court of competent jurisdiction shall require the issuance of a copy of the original certificate of birth.

The state commissioner of health shall arrange, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive and continuous typewritten or printed index of all births and deaths registered; said index to be arranged, in the case of deaths, by the names of decedents, and in the case of births, by the names of fathers or mothers if the names of the fathers do not appear. He shall inform all registrars what diseases are to be considered infectious, contagious, or communicable and dangerous to the public health, as decided by the public health council and when deaths occur from such diseases the registrar shall forthwith report to the local health officer, on a form provided for the purpose, the name, age, and address of the deceased, together with the disease, and

the name of the physician who has certified the cause of death, so that proper precautions may be taken to prevent their spread. (Amended by L. 1922, ch. 415, L. 1925, ch. 367, L. 1936, ch. 854, L. 1937, ch. 391, L. 1939, chs. 150 and 544, L. 1941, ch. 42, and L. 1944, ch. 589.)

§ 388. **Certified copies of birth certificates evidence of age.** Certified copies of birth certificates, or of statements based on duly registered certificates of birth shall be accepted by public school authorities in this state as prima facie evidence of age of children, registering for school attendance, and by the legally constituted authorities as prima facie proof of age for the issuance of employment certificates, provided that when it is not possible to secure such certified copy of birth registration certificate for any child, the school authorities may accept as secondary proof of age any of the kinds of evidence specified in the labor law.

§ 389. **District records to be kept by registrar.** Each registrar shall supply blank forms of certificates to such persons as require them. Each registrar shall carefully examine each certificate of birth or death when presented for record in order to ascertain whether or not it has been made out in accordance with the provisions of this act and the instructions of the state commissioner of health; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return, and he may withhold the burial or removal permit until such defects are corrected. All certificates, either of birth or death, shall be written legibly, in durable black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission. If the certificate of death is properly executed and complete, he shall then issue a burial or removal permit to the undertaker; provided, that in case the death occurred from some disease which is held by the public health council to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be issued by the registrar, except to an undertaker licensed in accordance with the provisions of article fourteen of the public health law, under such conditions as may be prescribed by the state public health council. If a certificate of birth is incomplete, the local registrar shall immediately notify the person who signed the record, and require him to supply the missing items of information if they can be obtained.

He shall number consecutively the certificates of birth and death, in two separate series, beginning with the number one for the first birth and the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall also make a complete and accurate copy of each birth and each death certificate registered by him in a record book supplied by the state commissioner of health, and shall file the permit for each burial or cremation in his district, to be preserved permanently in his office as the local record, in such manner as directed by the state commissioner of health.

Within ten days after receiving the certificate of birth he shall furnish without charge to the parents or guardian of the child or to the mother at the address designated by her for the purpose, a certificate of registration, to be made out on a form furnished by the state commissioner of health. A certificate of registration shall be accepted by public authorities in this state for the purposes indicated in section three hundred and eighty-eight of this chapter in the same manner as certified copies of birth certificates. The local registrar shall also make a notation on his copy of the original birth certificate indicating the date of issuance of such certificate of registration.

Upon request a certification of birth or a verified transcript of a death record shall be issued by the registrar under regulations prescribed by the state commissioner of health. A certification of birth shall contain only the name, sex, date of birth, place of birth, and date of filing of the certificate of birth of the person to whom it relates and none of the other data on the certificate of birth. A verified transcript of a birth record shall be issued only upon order of a court of competent jurisdiction or upon a specific request therefor by the person, if of age, or by a parent or other lawful representative of the person to whom the record of birth relates. The registrar shall be entitled to a fee of fifty cents for each certification of birth and fifty cents for each verified transcript of any record of a birth or of a death furnished by him to an applicant and he may charge a fee of twenty-five cents for a search of his files, except that no fee shall be charged for a search, certification of birth or verified transcript of a birth or a death record to be used for school entrance, employment certificate or for purposes of public relief or government compensation.

All fees for searches, certification and verified transcripts collected by a registrar of vital statistics in a state hospital, charitable or penal institution shall be transmitted by him to the executive department, having jurisdiction, management and control of such hospital or institution, to be paid into the state treasury as provided by section thirty-seven of the state finance law.

Any copy of the record of a birth or of a death or any certificate of registration of birth or any certification of birth, when properly certified by the local registrar, shall be *prima facie* evidence of the facts therein stated in all courts and places and in all actions, proceedings, or applications, judicial, administrative or otherwise, and any such certificate of registration of birth or any such certification of birth shall be accepted with the same force and effect with respect to the facts therein stated as the original certificate of birth or a certified copy thereof.

He shall, on the fifth day of each month, unless otherwise ordered by the state commissioner of health as provided in this section, transmit to the state commissioner of health all original certificates, including reports of foundlings, as required by section three hundred ninety-eight of the social welfare law, registered by him for the preceding month, and also any delayed certificates registered by him during the month. If no births or no deaths occurred in any month, he shall on the fifth day of the following month, unless otherwise ordered by the state commissioner of health as provided in this section, report that fact to the state commissioner of health on a card provided for such purpose. When the state commissioner of health shall have so ordered, each registrar shall transmit forthwith to the county health commissioner or to the district state health officer of the respective county or state health district in which such registrar's primary district is included, all original birth, still-birth and death certificates which have been registered in such primary registration district. Each county health commissioner and each district state health officer shall on the tenth day of each month transmit to the state commissioner of health all original certificates and reports received by him from such registrars in such county or state health district, for the preceding month, and also any delayed certificates received by him during the month.

*In any town where the compensation of the registrar, deputy registrar or subregistrar is fixed by a stipulated salary, all fees collected by them in the discharge of their duties shall be the property of the town and be paid to the supervisor. (Amended by L. 1919, ch. 213, L. 1922, ch. 415, L. 1924, ch. 168, L. 1925, ch. 367, L. 1932, ch. 93, L. 1935, ch. 125, L. 1936, chs. 263

* So in original. [This paragraph probably should be paragraph 5 of this section.]

and 854, L. 1937, ch. 391, L. 1939, ch. 150, L. 1941, chs. 172 and 336, L. 1943, ch. 555, and L. 1944, ch. 303, effective January 1, 1945.)

§ 390. **Fees of registrar for the prompt and correct return and filing of birth and death certificates.** Except as hereinbefore otherwise provided each registrar shall be paid the sum of fifty cents and each physician and each midwife shall be paid the sum of twenty-five cents for each birth certificate properly and completely made out and registered and twenty-five cents for each death certificate properly and completely made out in accordance with the international list of causes of death and returned and filed with the registrar and correctly recorded and promptly returned by him to the state commissioner of health, as required by this article; provided that the registrar shall be paid the sum of fifty cents for recording each stillbirth. And in case no births or no deaths were registered during any month, the local registrar shall report to that effect. Each local registrar shall be paid the sum of two dollars for a complete monthly report to be transmitted on the fifth day of the following month to the state commissioner of health on such form as may be provided or required by the commissioner. All amounts payable to the local registrar under the provisions of this article shall be paid by the municipality comprising the registration district, upon certification by the state commissioner of health and all amounts payable to physicians and midwives shall be certified to by the local registrar annually and paid to said physicians and midwives by said municipality. The state commissioner of health shall annually certify to the municipality the number of births and deaths properly registered, and of complete monthly reports promptly transmitted, with the name of the local registrar and the amount due him at the rate fixed herein. In addition thereto the local registrar shall be paid his actual and necessary expenses and a fee of twenty-five cents for each burial, removal or transit permit issued by him. A village clerk, unless the charter of the village provides otherwise, or a town clerk serving as registrar of vital statistics shall be entitled to the fees provided in this section.

In any town where the compensation of the registrar, deputy registrar or subregistrar is fixed by the town board at a stipulated salary, the provisions herein as to the payment of fees or as to the certification by the state commissioner of health shall not apply. (Amended by L. 1915, ch. 385, L. 1917, ch. 111, L. 1919, ch. 213, L. 1925, ch. 367, L. 1929, ch. 367, L. 1931, ch. 265, L. 1935, chs. 125 and 462, L. 1937, ch. 217, L. 1943, ch. 555, and L. 1944, ch. 303, effective January 1, 1945.)

§ 391. **Certified copies of records; certifications of birth; state commissioner of health to furnish.** The state commissioner of health or person authorized by him shall, upon request, supply to any applicant a certified copy of the record of any death registered under the provisions of this act, unless he is satisfied that the same does not appear to be necessary or required for judicial or other proper purposes. He shall be entitled to a fee of one dollar for each certified copy of a record of any birth or death to be paid by the applicant.

He shall issue certified copies of birth certificates or certifications of births under the following conditions: 1. A certified copy of the certificate of birth shall be issued only upon order of a court of competent jurisdiction or upon a specific request therefor by the person, if of age, or by a parent or other lawful representative of the person to whom the record of birth relates or by a department of a state or the federal government.

2. Upon request in all other cases, a certification of birth shall be issued by the state commissioner of health unless in his judgment it does not appear to be necessary or required for a proper purpose. A certification of birth shall contain only the name, sex, date of birth and place of birth of the

person to whom it relates and none of the other data on the certificate of birth provided that additional information may be furnished whenever required for genealogical purposes. The state commissioner of health shall be entitled to a fee of fifty cents for each certification of birth furnished by him to an applicant. For any search of the files and records when no certified copy is made, or no certification of birth is issued, the state commissioner of health shall be entitled to a fee of fifty cents for each hour or fractional part of an hour of time of search, said fee to be paid by the applicant.

Any copy of the record of a birth or death or any certification of birth, when properly certified by the state commissioner of health or persons authorized to act for him shall be prima facie evidence in all courts and places of the facts therein stated.

The United States census bureau may obtain, without expense to the state, transcripts of birth and death certificates without payment of fee here prescribed for use solely as statistical data.

The United States social security board may obtain, without expense to the state, information from death certificates needed in the administration of old-age and survivors insurance benefits laws.

No fee shall be charged for a search, certification or certified copy of a record to be used for school entrance, employment certificate or for purposes of public relief. Except as herein otherwise provided, the state commissioner of health is authorized to establish rules and regulations whereby searches may be made and certifications and certified copies furnished without fees to federal, state and municipal departments for official purposes.

If at any time after the birth, or within one year of the death of any person within the state, a certified copy of the official record of said birth or death with the information required to be registered by this act, be necessary for legal, judicial, or other proper purposes, and, after search by the state commissioner of health or his representative, it should appear that no such certificate of birth or death was made and filed as provided by this act, then the state commissioner of health shall immediately require the physician, or midwife, who, being in attendance upon a birth since the date of the taking effect of this act, failed or neglected to file a certificate thereof or the undertaker, or other person who having charge of the interment or removal of the body of a deceased person since the date of the taking effect of this act, failed or neglected to file the certificate of death, if he or she be living to obtain and file at once with the local registrar such certificate in as complete form as the lapse of time will permit.

With said certificate shall be filed such sworn statements, affidavits and other evidence as may be required by the state commissioner of health. The delinquent physician, midwife, undertaker, or other person may, in the discretion of the state commissioner of health be prosecuted as required by this article, without bar from the statute of limitations, if he or she shall neglect or fail to file promptly the certificate required by this section. If the physician, midwife, or undertaker responsible for the report, is deceased or cannot be located, then the person making application for the certified copy of the record may file such certificate of birth or death together with such sworn statements, affidavits and other evidence as the state commissioner of health may require. The state commissioner of health shall file such certificate and issue a certified copy thereof to said applicant without fee. The state commissioner of health shall keep a true and correct account of all fees by him received under this section, and pay the same into the state treasury, as provided in section thirty-seven of the state finance law. (Amended by L. 1921, ch. 398, L. 1925, ch. 367, L. 1932, ch. 113, L. 1936, ch. 854, L. 1937, ch. 391, L. 1939, ch. 150, L. 1940, ch. 501, and L. 1943, ch. 17.)

§ 391-a. **Refund of fees.** Moneys received pursuant to this article may within one year from the receipt thereof be refunded on proof satisfactory to the commissioner that such moneys were in excess of amounts required by law. Such refund shall after audit by the comptroller be paid by the commissioner from any moneys in the custody of the commissioner received pursuant to this article. (Added by L. 1940, ch. 501.)

§ 392. **Penalties.** Any person, who for himself or as an officer, agent, or employee of any other person, or of any corporation or partnership, shall inter, cremate, or otherwise finally dispose of the dead body of a human being, or permit the same to be done, or shall remove said body from the primary registration district in which the death occurred or the body was found, without the authority of a burial or removal permit issued by the local registrar of the district in which the death occurred, or in which the body was found; or shall refuse or fail to furnish correctly any information in his possession, or shall furnish false information affecting any certificate or record, required by this article; or shall wilfully alter, otherwise than is provided by this article, or shall falsify any certificate of birth or death, or any record established by this article; or being required by this article to fill out a certificate of death and file the same with the local registrar, or deliver it, upon request, to any person charged with the duty of filing the same, shall fail, neglect or refuse to perform such duty in the manner required by this article; or being a registrar, deputy registrar, or subregistrar, shall fail, neglect or refuse to perform his duty as required by this article and by the instructions and direction of the state commissioner of health thereunder, shall be deemed guilty of a misdemeanor and upon conviction thereof shall for the first offense be fined not less than five dollars nor more than fifty dollars and for each subsequent offense not less than ten dollars, or more than one hundred dollars or be imprisoned in the county jail not more than sixty days, or be both fined and imprisoned in the discretion of the court. Whenever any physician, midwife, or other person shall fail or neglect to properly record and file a certificate of birth as required by this article such person shall be liable to a penalty of not less than five dollars nor more than fifty dollars for the first and second offenses, which penalty may be recovered by an action brought by the state commissioner of health in any court of competent jurisdiction, and for every subsequent offense, such person shall be guilty of a misdemeanor, punishable by a fine of not less than ten nor more than one hundred dollars, or by imprisonment for not more than sixty days, or both. (Amended by L. 1916, ch. 58.)

§ 393. **Enforcement.** Each registrar is hereby charged with the strict and thorough enforcement of the provisions of this article, in his registration district, under the supervision and direction of the state commissioner of health. He shall make an immediate report to the state commissioner of health of any violation of any provision of this article coming to his knowledge, by observation or upon complaint of any person, or otherwise.

The state commissioner of health is hereby charged with the thorough and efficient execution of the provisions of this article in every part of the state, and is hereby granted supervisory power over registrars, deputy registrars, and subregistrars, to the end that all of its requirements shall be uniformly complied with. The state commissioner of health, either personally or by an accredited representative, shall have authority to investigate cases of irregularity or violation of law, and all registrars shall aid him, upon request, in such investigations. When he shall deem it necessary, he shall report cases of violation of any of the provisions of this article to the district attorney of the county, with a statement of the facts and circumstances; and when any such case is reported to him by the state commissioner of health, the prosecuting attorney shall forthwith initiate and

promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation of law. Upon request of the state commissioner of health, the attorney-general shall assist in the enforcement of the provisions of this article.

§ 394. **Exemptions.** Nothing in this article shall be construed to affect, alter, or repeal laws now in force applying to the city of New York.

ARTICLE XXI

County mosquito extermination commission*

(Added by L. 1916, ch. 408)

- Section 400. Establishment; appointment of commissioners.
 401. Chairman of board of supervisors ex officio member.
 402. The state commissioner of health to appoint one member of such commission.
 403. Members to serve without compensation.
 404. Commissions; terms of office.
 405. Official oath; officers.
 406. Commission a body corporate and politic: powers.
 407. Secretary of commission; salary.
 408. Clerks and assistants.
 409. Duties of clerks and assistants.
 409-a. Accumulation of water a nuisance.
 410. Powers and duties of commission.
 411. Publication of notice of entry, claims, damages and payments.
 412. Estimate of annual requirements; power and duty of state health commissioner.
 413. Powers and duties of board of supervisors.
 414. Disbursements by county treasurer.
 415. Annual report.
 416. Reservation of powers.
 417. Temporary provision for nineteen hundred and sixteen. (Repealed.)
 418. Obstructions; interferences.

§ 400. **Establishment; appointment of commissioners.** In a county of the state of New York, adjacent to a county which contains not more than three towns and which is adjacent to a city of the first class, having a population of over three million, the board of supervisors shall act as the appointing board. The appointing board shall be known as "The (here shall be inserted the name of the county in and for which such appointing board shall act) County Board" for the appointment of a county mosquito extermination commission, as hereinafter provided. The members of such appointing board shall serve without pay, except that the necessary expenses of each member for actual attendance at any meeting of such board shall be allowed and paid. Within ten days after the presentation of a petition signed and acknowledged in the same manner as are deeds entitled to be recorded, by two hundred residents of such county, it shall be the duty of the chairman of the board of supervisors to convene the said board, at the most suitable and convenient place, or otherwise arrange for concerted action, for the appointment of four resident taxpayers in such county, who, with the chairman of the board of supervisors and one member, to be appointed by the state commissioner of health, as provided by sections four hundred and one and

* This article, insofar as it related to Nassau County, was repealed by L. 1939, ch. 272, § 2, which enacted the Nassau County Administrative Code.

four hundred and two of this article, shall constitute a board of commissioners to be known as "The (here shall be inserted the name of the county in and for which the commissioners are to be appointed) County Mosquito Extermination Commission." (Amended by 1934, ch. 499, and L. 1939, ch. 722.)

§ 401. **Chairman of board of supervisors ex officio member.** The chairman of the board of supervisors of the county in and for which a commission is appointed, shall be a member ex officio of such commission, and shall serve without compensation, except that the necessary expenses actually incurred by his attendance upon meetings of such commission shall be allowed and paid. He shall have equal powers, privileges and duties with the other members of such commission. (Amended by L. 1939, ch. 722.)

§ 402. **The state commissioner of health to appoint one member of such commission.** The state commissioner of health shall appoint one member of such commission who shall have equal powers, privileges and duties with the other members of such commission. Such member shall be a resident of the county for which such commissioners are appointed, and he shall in addition to his powers, duties and privileges conferred, represent the state commissioner of health in all matters as the state commissioner of health may direct.

§ 403. **Members to serve without compensation.** The members of such commission shall serve without compensation, except that the necessary expenses of each commissioner for actual attendance at meetings of such commission shall be allowed and paid. No person employed by such commission shall be a member thereof.

§ 404. **Commissions; terms of office.** The commissioners first appointed by the county board in any district under the provisions of this article shall hold office respectively for the term of one, two, three and four years. The term of the member appointed by the state commissioner of health shall be four years. All such commissioners after the first appointment shall be appointed for the full term of four years. Vacancies in such commission, occurring by resignation or otherwise, shall be filled by the county board in the manner provided in section four hundred except any vacancy caused by resignation or otherwise of the member appointed by the state commissioner of health, which shall be filled by the state commissioner of health in the manner provided in section four hundred and two of this article, and the persons so appointed to fill such vacancies shall be appointed for the unexpired term only.

§ 405. **Official oath; officers.** Before entering upon the duties of his office each commissioner shall take and subscribe an oath or affirmation before the clerk of the county in which is situated the district in and for which he is appointed to faithfully and impartially perform the duties of his office, which oath or affirmation shall be filed with such clerk. Such commission shall annually choose from among its members a president and treasurer, who shall serve without pay, and they shall respectively perform the duties ordinarily incidental to such offices. (Amended by L. 1939, ch. 722.)

§ 406. **Commission a body corporate and politic; powers.** From and after the appointment, qualification and organization of such commissioners, such mosquito extermination commission shall become and be a body corporate and politic, under the name given in such petition, and by such name and style may sue, be sued, execute contracts, have a corporate seal, and shall have all powers herein conferred upon it within the county wherein it is appointed. (Amended by L. 1939, ch. 722.)

§ 407. **Secretary of commission; salary.** The commission may appoint a secretary, whose compensation shall be fixed by such commission, by and with the approval of the board of supervisors. (Amended by L. 1921, ch. 487.)

§ 408. **Clerks and assistants.** Said commission may, with the approval of the board of supervisors of the county, appoint and employ such clerks, assistants, inspectors and day laborers as may be necessary to carry out the provisions of this article. The compensation of such clerks and assistants shall be fixed by the board of supervisors of the county.

§ 409. **Duties of clerks and assistants.** The commission shall prescribe the duties and hours of employment of clerks and assistants and make all rules and regulations respecting the same. The commission shall furnish them with necessary and proper facilities.

§ 409-a. **Accumulation of water a nuisance.** Any accumulation of water in which mosquitoes are breeding, or are likely to breed, is hereby declared to be a nuisance.

§ 410. **Powers and duties of commission.** Said commission shall use every means feasible and practicable to exterminate mosquitoes, of every variety, found within the county for which such commission is appointed. Such commission shall have power and authority to enter without hindrance upon any or all lands within the county for the purpose of draining or treating the same and to perform all other acts which in its opinion and judgment may be necessary and proper for the elimination of breeding places of mosquitoes or which will tend to exterminate mosquitoes of fresh water, salt water and every other kind of variety found within such counties, but such measures shall not be one injurious to wild life. (Amended by L. 1934, ch. 499, and L. 1939, ch. 722.)

§ 411. **Publication of notice of entry, claims, damages and payments.** Before entering upon any such lands for such purposes as outlined under section four hundred and ten hereof, the commission shall publish each year at least once during the year, immediately following the approval by the board of supervisors of its plans for work during the ensuing year as provided in this article, in at least one newspaper in every town of the county where work is to be performed and in which such a paper is published, a general description of the land with the names of the owners thereof as shown by the last assessment-rolls, if known, if the name of the owner or owners be unknown that fact must be stated and published; and in case of a town where work is to be performed by the commission and in which no newspaper is published, individual notices shall be first sent to every owner in such town upon whose land the commission proposes to enter for said purposes if the name of such owner be known, if unknown such notice shall be posted in not less than five conspicuous places in such town. Any person objecting to or who is aggrieved or who claims damages due to the execution of the work of the commission, shall file a protest with the commission setting forth his grievance or claim. The commission shall thereupon and within thirty days after the filing of such protest or claim, set a day for a public hearing thereof. In all such cases the decision of the commission as to the necessity of such work shall be final. Any damage claimed by any party on account of entry work of the commission upon his property shall be determined by an action in court to be tried in the county; and the amount of any damage that may be awarded such party shall be included in the next succeeding estimate of annual requirements of the commission and shall be included in the annual tax levy as provided for in this article, and be paid by the commission. (Amended by L. 1922, ch. 196.)

§ 412. **Estimate of annual requirements; power and duty of state health commissioner.** Such county commission shall, on or before the first day of September in each year, file with the state commissioner of health and with the board of supervisors of such county, a detailed estimate of the moneys

required for the ensuing year and a plan of the work to be done and the methods to be employed, together with a general description of such lands with the names of the owners thereof, as recorded by the last assessment-rolls if known, if unknown that fact shall be stated, as the commission proposes to enter upon and to execute such plans and work. (Amended by L. 1922, ch. 196, and L. 1939, ch. 722.)

§ 413. **Powers and duties of board of supervisors.** The board of supervisors shall have power to approve, modify or alter such estimates, plans and methods, and it shall be the duty of the board of supervisors in the county in which a commission is appointed at its annual or other meeting held in the month of October of each year and on receipt of the said report from the county commission, to cause to be included in the annual tax levy of such county and added to the tax roll for the succeeding year the amount of money included in such estimate of moneys, as approved, modified or altered by it for the use and purposes of the mosquito extermination commission, in its said county, provided, however, that in no one year shall the amount so raised exceed the amount hereinafter specified to wit: in counties where the assessed valuations are not more than forty million dollars, a sum not greater than one mill on every dollar of assessed valuation; in counties where the assessed valuations are in excess of forty million dollars, a sum not greater than three-eighths of one mill on every dollar of assessed valuation. Provided, however, that any district which at the time when this section, as hereby amended, takes effect, shall have been legally established under chapter two hundred and forty-six of the laws of nineteen hundred and sixteen, as amended by chapter thirteen of the laws of nineteen hundred and twenty-six, shall be exempted from the provisions of this chapter and from taxation under it. (Amended by L. 1922, ch. 196, L. 1934, ch. 499, and L. 1939, ch. 722.)

§ 414. **Disbursements by county treasurer.** The county treasurer of such county shall pay from time to time to the mosquito extermination commission, on the requisition of such commission, duly signed and approved by the president and secretary thereof, the amount of moneys so specified in the annual tax levy for the purposes and uses of such mosquito extermination commission. (Amended by L. 1939, ch. 722.)

§ 415. **Annual report.** It shall be the duty of such mosquito extermination commission, on or before the first day of September in each year, to submit to the state commissioner of health and to the board of supervisors in the county comprised within a mosquito extermination district, a report setting forth the amount of moneys expended during the previous year showing each item of expenditure, the methods employed, the work accomplished and any other information which in its judgment may seem pertinent, or which the board of supervisors may demand. Such report shall be published in at least one newspaper published in the county. (Amended by L. 1939, ch. 722.)

§ 416. **Reservation of powers.** Nothing in this article shall be construed to alter, amend, modify or repeal sections twenty-six to thirty-two inclusive, of this law, or of any of the provisions of the drainage law* except to the extent that the provisions of this article are inconsistent therewith.

§ 417. **Temporary provision for nineteen hundred and sixteen.** (Repealed by L. 1941, ch. 42.)

§ 418. **Obstructions; interferences.** Any person who obstructs or interferes with the entry of the commission or its employees upon land or who obstructs or interferes with, molests, or damages any of the work performed by the commission shall be guilty of a misdemeanor.

* Subject covered in Conservation Law.

ARTICLE XXII

Uniform narcotic drug act†

(Added by L. 1933, ch. 684)

(Former Article XXII relating to habit forming drugs repealed)

- Section 420. Short title.
421. Definitions.
- 421-a. Powers and duties of the commissioner.
422. Acts prohibited.
423. Manufacturers and wholesalers.
424. Qualification for licenses.
- 424-a. Approval of hospitals, laboratories and dispensaries.
425. Sale on written orders.
426. Sales by apothecaries.
427. Professional use of narcotic drugs.
428. Preparations exempted.
- 428-a. Dispensaries; approval respecting certain narcotic preparations.
429. Record to be kept.
430. Written orders for and records of cannabis indica and cannabis sativa. (Repealed.)
431. Labels.
432. Authorized possession of narcotic drugs by individuals.
433. Persons and corporations exempted.
434. Common nuisances.
435. Disposition of forfeited narcotic drugs.
436. Notice of conviction to be sent to licensing authority.
437. Records confidential.
438. Fraud or deceit.
439. Commitment of addicts; procedure; discharge.
440. Exceptions and exemptions not required to be negated.
441. Possession of apparatus for use of opium.
442. Obtaining drugs from one physician while under treatment from another.
443. Enforcement and cooperation.
444. Penalties.
445. Effect of acquittal or conviction under federal narcotic laws.
446. Constitutionality.
447. Interpretation and construction of article.
448. Repeal of inconsistent laws.

§ 420. **Short title.** This article shall be known as the uniform narcotic drug law.

§ 421. **Definitions.** The following words and phrases, as used in this article, shall have the following meanings, unless the context otherwise requires:

1. "Person" includes any corporation, association, co-partnership, or one or more individuals.

2. "Physician" means a person authorized by law to practice medicine in this state and to use narcotic drugs in connection with such treatment.

3. "Dentist" means a person authorized by law to practice dentistry in this state.

4. "Veterinarian" means a person authorized by law to practice veterinary medicine in this state.

5. "Manufacturer" means a person who by compounding, mixing, cultivating, growing, or other process, produces or prepares narcotic drugs, but

† See Penal Law and Code of Criminal Procedure.

does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescriptions.

6. "Wholesaler" means a person who supplies others than consumers with narcotic drugs or preparations containing narcotic drugs that he himself has not produced or prepared. (Amended by L. 1936, ch. 498.)

7. "Apothecary" means a licensed pharmacist as defined by the laws of this state and, where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this article shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege, that is not granted to him by the pharmacy laws of this state.

8. "Hospital" means an institution for the care and treatment of the sick and injured, approved by the department of health as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist or veterinarian.

9. "Laboratory" means a laboratory approved by the department of health as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction.

10. "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employee.

11. "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture, or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, eegonine, or substances from which cocaine or eegonine may be synthesized or made.

12. "Opium" includes morphine, codeine and heroin, and any compound, manufacture, salt, derivative, mixture or preparation of opium, including apomorphine or any of its salts.

13. "Cannabis" includes the following substances under whatever names they may be designated: all parts of the plant *cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

14. "Narcotic drugs" means coca leaves, opium, isonipecaine, cannabis and every substance neither chemically nor physically distinguishable from them.

15. "Federal Narcotic Laws" means the laws of the United States relating to opium, coca leaves, and other narcotic drugs.

16. "Official written order" means an order written on a form provided for that purpose by the United States commissioner of narcotics, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law, and if no such order form is provided, then on an official form provided for that purpose by the department of health.

17. "Dispense" includes distribute, leave with, give away, dispose of, or deliver.

18. "Registry number" means the number assigned to each person registered under the federal narcotic laws.

19. "Department" means the state department of health.

20. "Bureau" means the bureau of narcotic control. (Repealed.)

21. "Isonipecaïne" means the substance identified chemically as 1-methyl-4-phenyl-piperidine-4-carboxylic acid ethyle ester, or any salt thereof by whatever trade name identified. (Amended by L. 1936, ch. 498, L. 1937, chs. 413 and 914, L. 1938, ch. 457, L. 1939, ch. 131, and L. 1944, chs. 298 and 374.)

§ 421-a. **Powers and duties of the commissioner.** The commissioner of health, with the approval of an advisory board to consist of five members, one member to be designated by the medical society of the state of New York, one by the New York state pharmaceutical association, one by the dental society of the state of New York, one by the New York state veterinary medical society, and one by the New York board of trade, drug and chemical section, is hereby authorized and empowered to make all needful or helpful rules, regulations and determinations which in his judgment may be necessary or proper to supplement the provisions of this article or to effectuate the purposes and intent thereof or clarify its provisions so as to provide the procedure or details, requisite in his judgment to secure effective and proper enforcement of its provisions, which rules, regulations and determinations, when made and promulgated by the commissioner of health, shall be the rules, regulations and determinations of the department and, until modified or rescinded, shall have the force and effect of law. It shall be the duty of the department, to enforce all of the provisions of this article and all of the rules, regulations and determinations made thereunder. The commissioner of health may for cause deemed by him to be sufficient, after having given reasonable notice and opportunity to be heard, revoke or suspend any license or approval issued or to be issued pursuant to this article and revoke, cancel or withhold official blanks issued or applied for. The commissioner of health shall obtain data and information relative to the extent of drug addiction and the means by which it can be controlled, reduced or eradicated and the means or methods employed in the treatment, cure and rehabilitation of persons addicted to the use of narcotics. He shall have the power to inspect and examine any hospital, sanatorium, institution or other place in which persons addicted to the use of drugs are received, cared for and treated. He and any representative authorized by him shall have the power to administer oaths, compel the attendance of witnesses and the production of books, papers and records and to take proof and testimony concerning all matters within the jurisdiction of the department, and for such purposes, no communication made to a physician shall be deemed confidential within the meaning of the provision of the civil practice act relating to confidential communications between physician and patient. For the purposes of this article, each representative of the commissioner shall possess, all of the powers of a peace officer. (Amended by L. 1944, ch. 298.)

§ 422. **Acts prohibited.** It shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense or compound any narcotic drug, except as authorized in this article.

§ 423. **Manufacturers and wholesalers.** No person shall manufacture, compound, mix, cultivate, grow or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same, without having first obtained a license so to do from the department.

§ 424. **Qualification for licenses.** No license shall be issued under the foregoing section unless and until the applicant therefor has furnished proof satisfactory to the department:

(a) That the applicant is of good moral character, or, if the applicant be an association or corporation, that the managing officers are of good moral character.

(b) That the applicant is equipped as to land, buildings, and paraphernalia properly to carry on the business described in his application.

No license shall be granted to any person who has within five years been convicted of a wilful violation of any law of the United States, or of any state, relating to opium, coca leaves, or other narcotic drugs, or to any person who is a narcotic drug addict.

The department may suspend or revoke any license for cause. (Amended by L. 1937, ch. 914.)

§ 424-a. **Approval of hospitals, laboratories and dispensaries.** Upon application to the department for approval by it of an institution as a hospital, or of a laboratory as such, or of an establishment or place as a dispensary, for the several purposes, relating to narcotic drugs or exempt narcotic preparations, specified in the definitions of hospital and laboratory and in the provisions of section four hundred and twenty-eight-a, pertaining to dispensaries, the department shall grant and certify such approval if satisfied, but not otherwise, from the application and/or other information that it has or may require, that such approval is proper. (Added by L. 1937, ch. 413.)

§ 425. **Sale on written orders.** 1. A duly licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons, but only on official written orders:

(a) To a manufacturer, wholesaler, or apothecary.

(b) To a physician, dentist or veterinarian.

(c) To a person in charge of a hospital, but only for use by or in that hospital.

(d) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medical purposes.

2. A duly licensed manufacturer or wholesaler may sell narcotic drugs to any of the following persons:

(a) On a special written order accompanied by a certificate of exemption, as required by the federal narcotic laws, to a person in the employ of the United States government or of any state, territorial, district, county, municipal, or insular government, purchasing, receiving, possessing, or dispensing narcotic drugs by reason of his official duties.

(b) To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or to a physician or surgeon duly licensed in any state, territory, or the District of Columbia to practice his profession, or to a retired commissioned medical officer of the United States army, navy, or public health service, employed upon such ship or aircraft, for the actual medical needs of persons on board such ship or aircraft, when not in port. Provided: Such narcotic drugs shall be sold to the master of such ship or person in charge of such aircraft, or to a physician, surgeon, or retired commissioned medical officer of the United States army, navy, or public health service, employed upon such ship or aircraft, only in pursuance of a special order form approved by a commissioned medical officer or acting assistant surgeon of the United States public health service. (Amended by L. 1940, ch. 108.)

(c) To a person in a foreign country if the provisions of the federal narcotic laws are complied with.

3. An official written order for any narcotic drug shall be signed in duplicate by the person giving said order or by his duly authorized agent. The original shall be presented to the person who sells or dispenses the narcotic drug or drugs named therein. In event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two years in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this article. It shall be deemed a compliance with this subdivision if the parties to the transaction have complied with the federal narcotic laws, respecting the requirements governing the use of order forms.

4. Possession of or control of narcotic drugs obtained as authorized by this section shall be lawful if in the regular course of business, occupation, profession, employment or duty of the possessor.

5. A person in charge of a hospital or of a laboratory, or in the employ of this state or of any other state, or of any political subdivision thereof, or a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or a physician or surgeon duly licensed in some state, territory, or the District of Columbia, to practice his profession, or a retired commissioned medical officer of the United States army, navy, or public health service, employed upon such ship or aircraft, who obtains narcotic drugs under the provisions of this section or otherwise, shall not administer, nor dispense, nor otherwise use such drugs, within this state, except within the scope of his employment or official duty, and then only for scientific or medicinal purposes and subject to the provisions of this article. (Amended by L. 1940, ch. 108.)

§ 426. **Sales by apothecaries.** 1. An apothecary, in good faith, may sell and dispense narcotic drugs to any person upon a written prescription of a physician, dentist or veterinarian, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address and registry number under the federal narcotic laws of the person prescribing, if he is required by those laws to be so registered. If the prescription be for an animal it shall state the species of animal for which the drug is prescribed. The person filling the prescription shall write the date of filling and his own signature on the face of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this article. The prescription shall not be refilled.

2. The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler or apothecary, but only on an official written order.

3. An apothecary, only upon an official written order, may sell to a physician, dentist or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than twenty per cent of the complete solution, to be used for medical purposes.

§ 427. **Professional use of narcotic drugs.** 1. A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe, administer and dispense narcotic drugs, or he may cause the same to be administered by a nurse or interne under his direction and supervision.

2. A veterinarian, in good faith and in the course of his professional practice only, and not for use by a human being, may prescribe, administer and dispense narcotic drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision.

3. Any person who has obtained from a physician, dentist or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist or veterinarian, shall return to such physician, dentist or veterinarian any unused portion of such drug, when it is no longer required by the patient.

§ 428. **Preparations exempted.** Except as otherwise in this article specifically provided, this article shall not apply to the administering, dispensing or selling at retail of Stokes expectorant or Browns mixture in a quantity of not more than four ounces to one person at one time, or any medicinal

preparations other than Stokes expectorant or Browns mixture that contains in one fluid ounce, or if a solid or semi-solid preparation, in one avoirdupois ounce, not more than one grain of codeine or of any of its salts.

1. The exemption authorized by this section shall be subject to the following conditions: (1) that the medicinal preparation administered, dispensed, or sold, shall contain, in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone; and (2) that such preparation shall be administered, dispensed, and sold in good faith as a medicine, and not for the purpose of evading the provisions of this article.

2. Nothing in this section shall be construed to limit the quantity of codeine or of any of its salts that may be prescribed, administered, dispensed or sold to any person or for the use of any person or animal, when it is prescribed, administered, dispensed or sold in compliance with the general provisions of this article. (Amended by L. 1939, ch. 131, L. 1941, ch. 225, and L. 1942, ch. 426.)

§ 428-a. **Dispensaries; approval respecting certain narcotic preparations.** Notwithstanding the provisions of section four hundred and twenty-eight, the narcotic preparations therein described shall not be possessed, dispensed or sold after July first, nineteen hundred thirty-seven, by or at an establishment or place commonly known as a "dispensary," except it shall have been approved as proper to be entrusted with the custody of such preparations and their professional use under the direction of an authorized person. (Added by L. 1937, ch. 413.)

§ 429. **Record to be kept.** 1. Every physician, dentist, veterinarian or other person who is authorized to administer or professionally use narcotic drugs, shall keep a record of such drugs received by him and a record of all such drugs administered, dispensed or professionally used by him otherwise than by prescription. It shall, however, be deemed a sufficient compliance with this subdivision if any such person using small quantities of solutions or other preparations of such drugs for local application, shall keep a record of the quantity, character and potency of such solutions or other preparations purchased or made up by him and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients. Provided: That no record need be kept of narcotic drugs administered, dispensed or professionally used in the treatment of any one patient, when the amount administered, dispensed or professionally used for that purpose does not exceed in any forty-eight consecutive hours, (a) four grains of opium, or (b) one-half of a grain of morphine or of any of its salts, or (c) two grains of codeine or of any of its salts, (d) one-fourth of a grain of heroin or of any of its salts, or (e) a quantity of any other narcotic drug or any combination of narcotic drugs that does not exceed in pharmacologic potency any one of the drugs named above in the quantity stated. (Amended by L. 1939, ch. 131.)

2. Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of subdivision five of this section.

3. Apothecaries shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of subdivision five of this section.

4. Every person who purchases for resale, or who sells narcotic drug preparations exempted by section four hundred twenty-eight of this article, shall keep a record showing the quantities and kinds thereof received and

sold, or disposed of otherwise, in accordance with the provisions of subdivision five of this section.

5. The form of records shall be prescribed by the department. The record of narcotic drugs received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received; the kind and quality of narcotic drugs produced or removed from process of manufacture; and the date of such production or removal from process of manufacture; and the record shall in every case show the proportion of morphine, cocaine or ecgonine contained in or producible from crude opium or coca leaves received or produced and the proportion of resin contained in or producible from the plant *cannabis sativa* L. from which the resin has not been extracted, received or produced. The record of all narcotic drugs sold, administered, dispensed or otherwise disposed of, shall show the date of selling, administering or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity of drugs. Every such record shall be kept for a period of two years from the date of the transaction recorded. The keeping of a record required by or under the federal narcotic laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of narcotic drugs lost, destroyed or stolen, if any, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction or theft. (Amended by L. 1939, ch. 131.)

§ 430. Written orders for and records of *cannabis indica* and *cannabis sativa*. (Repealed by L. 1939, ch. 131.)

§ 431. Labels. 1. Whenever a manufacturer sells or dispenses a narcotic drug, and whenever a wholesaler sells or dispenses a narcotic drug in a package prepared by him, he shall securely affix to each package in which that drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind and form of narcotic drug contained therein. No person, except an apothecary for the purpose of filling a prescription under this article, shall alter, deface or remove any label so affixed.

2. Whenever an apothecary sells or dispenses any narcotic drug on a prescription issued by a physician, dentist or veterinarian, he shall affix to the container in which such drug is sold or dispensed, a label showing his own name, address and registry number, or the name, address and registry number of the apothecary for whom he is lawfully acting; the name and address of the patient or, if the patient is an animal, the name and address of the owner of the animal and the species of the animal; the name, address and registry number of the physician, dentist or veterinarian by whom the prescription was written; and such directions as may be stated on the prescription. No person shall alter, deface or remove any label so affixed.

§ 432. Authorized possession of narcotic drugs by individuals. A person to whom or for whose use any narcotic drug has been prescribed, sold or dispensed by a physician, dentist, apothecary or other person authorized under the provisions of section four hundred twenty-five of this article, and the owner of any animal for which any such drug has been prescribed, sold or dispensed by a veterinarian, may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same.

§ 433. Persons and corporations exempted. The provisions of this article restricting the possession and having control of narcotic drugs shall not

apply to common carriers or to warehousemen, while engaged in lawfully transporting or storing such drugs, or to any employee of the same acting within the scope of his employment; or to public officers or their employees in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties.

§ 434. **Common nuisances.** Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same, shall be deemed a common nuisance. No person shall keep or maintain such a common nuisance.

§ 435. **Disposition of forfeited narcotic drugs.** All narcotic drugs, the lawful possession of which is not established or the title to which can not be ascertained, which have come into the custody of a peace officer, shall be forfeited, and disposed of as follows:

(a) Except as in this section otherwise provided, the court or magistrate having jurisdiction shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place and manner of destruction, shall be kept, and a return under oath, reporting said destruction, shall be made to the court or magistrate and to the United States commissioner of narcotics, by the officer who destroys them.

(b) Upon written application by the commissioner of health, the court or magistrate by whom the forfeiture of narcotic drugs has been decreed may order the delivery of any of them, except heroin and its salts and derivatives, to such commissioner for distribution or destruction, as hereinafter provided.

(c) Upon application by any hospital within this state, not operated for private gain, the commissioner of health may in his discretion deliver any narcotic drugs that have come into his custody by authority of this section to the applicants for medicinal use. The commissioner may from time to time deliver excess stocks of such narcotic drugs to the United States commissioner of narcotics or shall destroy the same.

(d) The commissioner of health shall keep a full and complete record of all drugs received and of all drugs disposed of, showing the exact kinds, quantities and forms of such drugs; the persons from whom received and to whom delivered; by whose authority received, delivered and destroyed; and the dates of the receipt, disposal or destruction, which record shall be open to inspection by all federal or state officers charged with the enforcement of federal and state narcotic laws.

§ 436. **Notice of conviction to be sent to licensing authority.** On the conviction of any person of the violation of any provision of this article, a copy of the judgment and sentence, and of the opinion of the court or magistrate, if any opinion be filed shall be sent by the clerk of the court, or by the magistrate, to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice his profession, or to carry on his business. On the application of any person whose license or registration has been suspended or revoked, and upon proper showing and for good cause, such board or officer may reinstate such license or registration.

§ 437. **Records confidential.** Prescriptions, orders and records, required by this article, and stocks of narcotic drugs, shall be open for inspection only to federal, state, county and municipal officers, whose duty it is to enforce the laws of this state or of the United States relating to narcotic drugs. No officer having knowledge by virtue of his office of any such prescription,

order or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders or records relate is a party.

§ 438. **Fraud or deceit.** 1. No person shall obtain or attempt to obtain a narcotic drug, or procure or attempt to procure the administration of a narcotic drug, (a) by fraud, deceit, misrepresentation or subterfuge; or (b) by the forgery or alteration of a prescription or of any written order; or (c) by the concealment of a material fact; or (d) by the use of a false name or the giving of a false address.

2. Information communicated to a physician in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

3. No person shall wilfully make a false statement in any prescription, order, report or record required by this article.

4. No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian or other authorized person.

5. No person shall make or utter any false or forged prescription or false or forged written order.

6. No person shall affix any false or forged label to a package or receptacle containing narcotic drugs.

7. The provisions of this section shall apply to all transactions relating to narcotic drugs under the provisions of section four hundred twenty-eight of this article, in the same way as they apply to transactions under all other sections.

§ 439. **Commitment of addicts; procedure; discharge.** 1. At request of addict. A magistrate upon the voluntary application to him of any habitual user of any narcotic drug, may commit such person to any hospital or charitable institution maintained in whole or in part thereof by the state or any political subdivision thereof which is willing to receive such addict.

2. Person accused of crime. Any trial court having jurisdiction of a defendant who is a prisoner in a criminal action or proceeding, if it appears that the defendant is an habitual user of any narcotic drug and is suffering as a result of such use, may likewise so commit such defendant, at any stage of such action or proceeding and direct a stay of proceedings or suspend sentence pending the period of such commitment but not exceeding sixty days without a further order of the court.

3. Discharge. Whenever the medical officer of the institution, or if there be no medical officer, the superintendent, shall certify to the committing magistrate or court that any person so committed has been sufficiently treated, or give any other reason which is deemed by the magistrate or court to be adequate and sufficient, he may in accordance with the terms of commitment discharge the person so committed, or return such person to await the further action of the court, provided however, that when such commitment is to an institution under the jurisdiction of the department of correction, or other similar department in a city of the first class, where there is a parole commission established pursuant to law, such commission shall act in the place and stead of a chief medical officer for the purpose of making such a certificate, except that in the city of New York the chief medical officer of the department of correction shall make such certificate. (Amended by L. 1942, ch. 748.)

§ 440. **Exceptions and exemptions not required to be negated.** In any complaint, information or indictment, and in any action or proceeding brought for the enforcement of any provision of this article, it shall not be necessary to negative any exception, excuse, proviso or exemption contained in this

article, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the defendant.

§ 441. **Possession of apparatus for use of opium.** Any person who smokes or inhales opium or possesses any opium pipe, opium lamp or other device or apparatus designed or generally used for the purpose of preparing opium for smoking, or smoking or inhaling opium, or any article capable of being used as or as part of any such pipe, lamp or other device or apparatus shall be guilty of a violation of this article. This section shall not apply to an opium pipe, lamp or other such device or apparatus when possessed for exhibition purposes.

§ 442. **Obtaining drugs from one physician while under treatment from another.** Any person who in the course of treatment, is supplied with narcotic drugs or a prescription therefor by the treating physician and who, without disclosing the fact to such physician is supplied during such treatment with narcotic drugs or a prescription therefor by another physician shall be guilty of a violation of this article. (Amended by L. 1939, ch. 131.)

§ 443. **Enforcement and cooperation.** It is hereby made the duty of the department, its officers, agents, inspectors and representatives, and of all peace officers within the state, and of the judicial and police authorities of the state and of the political subdivisions thereof to enforce all provisions of this article, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to narcotic drugs. Such authorities and their agents shall have access at all times to all orders, prescriptions or records to be kept under this article.

§ 444. **Penalties.** A violation of any provision of this article shall be punishable as provided in the penal law.

§ 445. **Effect of acquittal or conviction under federal narcotic laws.** No person shall be prosecuted for a violation of any provision of this article if such person has been acquitted or convicted under the federal narcotic laws of the same act or omission which, it is alleged, constitutes a violation of this article.

§ 446. **Constitutionality.** If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

§ 447. **Interpretation and construction of article.** This article shall be so interpreted and construed as to effectuate its general purpose, to make uniform the laws of those states which enact it.

§ 448. **Repeal of inconsistent laws.** All acts or parts of acts which are inconsistent with the provisions of this article are hereby repealed.

ARTICLE XXIII*

Live pathogenic microorganisms or viruses

(Added by L. 1932, ch. 151)

Section 450. Handling of live pathogenic microorganisms or viruses.

451. Registration of places where live pathogenic microorganisms are handled.

452. Sale or other disposal of live pathogenic microorganisms or viruses.

453. Violation of article.

* Article derived from L. 1917, ch. 411 as amended by L. 1921, ch. 269.

§ 450. **Handling of live pathogenic microorganisms or viruses.** No person other than a licensed practitioner of medicine, dentistry, or veterinary medicine or a person under the direct supervision of a licensed practitioner of medicine, dentistry, or veterinary medicine shall possess or cultivate live pathogenic microorganisms or viruses other than vaccine virus unless he has satisfied the state commissioner of health that such microorganisms or viruses in his possession will not become a menace to the public health and unless he shall hold a permit issued within the preceding twelve months by the state commissioner of health or his authorized representative so stating. The commissioner is authorized to rescind such a permit at any time for a cause. (Added by L. 1937, ch. 412.)

§ 451. **Registration of places where live pathogenic microorganisms are handled.** All places where live pathogenic microorganisms or viruses other than vaccine virus are handled or cultivated, shall be registered with the state department of health, and a registration number shall be issued to each place so registered. Registration and application for this registration number shall be made by the person in charge of the place where such microorganisms or viruses are handled. The registration number shall be valid for one year, at the expiration of which time it may be renewed upon application. A registration fee of one dollar shall be charged to cover the cost of issuing the registration number. (Renumbered and amended by L. 1937, ch. 412.)

§ 452. **Sale or other disposal of live pathogenic microorganisms or viruses.** All live pathogenic microorganisms or viruses other than vaccine virus when given away or sold shall bear a label on the container showing the registration number of the distributor which has been issued by the state department of health for the handling of pathogenic microorganisms or viruses, the name of the person obtaining the material, and the destination of the pathogenic microorganisms or viruses, and no person shall sell or convey any live pathogenic microorganisms or viruses other than vaccine virus to any other person without permission of the state commissioner of health. (Renumbered and amended by L. 1937, ch. 412.)

§ 453. **Violation of article.** Any violation of this article shall be deemed a misdemeanor punishable by a fine of two hundred dollars, six months' imprisonment or both. (Renumbered and amended by L. 1937, ch. 412.)

INDEX

(This index has been prepared on a noun basis. Whenever possible, each item has been cross indexed by person concerned, action to be taken and subject matter.)

	PAGE
Action: attorney general, violation Art. XIV.....	71
cause of, for damages.....	37, 50
enjoin nuisance (house of prostitution).....	99, 100
in court	48, 130
local board of health.....	35
municipalities; sewage discharge.....	56
municipality, mosquito breeding place.....	42
riparian owners	56
to restrain violation.....	35, 54, 56, 78
violation; health laws or regulations.....	16
water rules	48
Addicts: commitment, procedure, discharge.....	140
not to be licensed.....	135
resort of, common nuisance.....	139
Aid, state:	19, 33
county	18, 30
laboratory, city	32
laboratory service	33
Allotments, federal-aid	21
Almshouse: county, removal of inmates.....	39
dissection	84
fire alarm boxes.....	93
registration of persons in.....	121
Analyses: request of health officer or physician.....	10
Animal: prescription narcotic drug for.....	136
Apartments vacated by person having tuberculosis.....	89
Apothecaries: record narcotic drugs received and disposed of.....	137
sales narcotic drugs.....	136
Appeal: commission, laboratory.....	33
tuberculosis hospital site, town.....	87
Apprentice in embalming, register with department.....	68
Assistants: commissioner of health may employ.....	8, 12
county commissioner of health may employ.....	28
Asylums, fire alarm boxes.....	93
Attorney, district, certify hospital buildings fireproof.....	92
Attorney general:	14, 15, 16
approval order to discontinue pollution; enforce.....	53
assist enforcement vital statistics law.....	128
enforcement undertaking and embalming law.....	71, 76, 77
violations of health laws or regulations.....	16
Autopsies:	85
regulation and control; repeal provision.....	11
Bacteriologist in charge, county laboratory.....	31
qualifications	10
Bathing establishments, sanitary condition; preservation of life.....	81
Bedding, sheets, towels, in hotels.....	79
Bequests, grants, gifts.....	11, 21, 96, 106, 109, 110
Birth registration	119
Births and deaths, registration.....	9, 36, 115
Blindness, prevention of.....	17
Blood donor, certificate, physical examination.....	38
Blood tests, pregnant women, syphilis.....	17
Board: county, for appointment mosquito extermination commission.....	128
of appeal, county tuberculosis hospital site, town.....	87

Board of health:

	PAGE
city	13
city first class; smallpox, typhus, yellow fever and cholera	39
city 50,000; provide vaccination	80
consolidated health district	24
county; establishment, compensation, expense, powers and duties	26, 27
removal health officer, deputy, assistant	28
county and city; provide treatment venereal disease	105
local:	22
actions, may maintain	35
appointment; membership	22
bathing establishments	81
compensation of members	23
disease, infectious and contagious or communicable	38
infectious venereal suspects	104
reports confidential	105
dormitory ventilation; permit	84
expenses	44
general powers and duties	34
health officer appointment	22
compensation, duties	23
executive officer of board	34
failure to appoint	15
hotels, sanitary condition	79
institutions for children; inspection; complaints as to management	83
licensed persons to register with	69
mandamus	45
meetings	34
membership; organization	23
mosquito breeding places	41
nuisance, removal of	13, 41, 43
order, regulation, ordinance; commissioner of health may reverse or modify	9
order to convene	41
orders and regulations	34
penalties, prescribe and enforce	35
relation to county board of health	27
reports of municipal authorities	55
right of entrance	41
school children, vaccination	80
sewage discharge; record of permits	55
into Susquehanna river	51
subpoenas; witnesses; oaths	35
vaccination; expense; vaccine virus	39, 81
warrants	35
weeds and noxious growths	45
state park health district	9
town, jurisdiction	23, 44
tuberculosis hospital site	87
town or village, jurisdiction	23
village, power as to sewers	36
Board of managers: county health district coterminous with county	29
county laboratory, right of appeal	33
county tuberculosis hospital	29
Board of supervisors: certificate of consent, county health district	26
expenses, consolidated health district	25
county health district	29
laboratory supply station, county	11
statement by clerk	18
Board of trustees, village:	23
expense of sewers	36

PAGE

Bodies: dead, permits for burial or removal....	117, 119
from institutions, retained for relatives.....	85
interred, record	119
removal, deaths occurring on common carriers.....	118
Bond issues, county	60
Budget, director, approval of divisions, bureaus.....	8
Buffalo, excepted	93
Buildings, damages for removal for protection water supply.....	50
Bureau of narcotic control.....	133
Burial ground, burial permit required.....	119
Cadavers	84, 85
Camp, tuberculosis; approval of site, town	87
Canals, overflow of water from.....	13
Cancer: control	107
free treatment	106
reporting to health officer	40
state institute for study of malignant diseases, Buffalo.....	106
Cannabis, defined	133
Carrier, disease	45, 90, 104
Cemeteries: burial permit required	119
interments in, cities 3rd class	37
Certificate: birth; certified copies	125
certified copies evidence of age	123
furnished parent	123
information required	120
new; filing; seal; certification, adopted child	122
no statement marital status mother.....	120
registrar to obtain missing items	117, 120, 122, 123
registration	119, 120, 121
supplemental report given name of child	121
unrecorded	126
coroner's, death without medical attendance.....	118
for discharge of drug addict	140
of: amount, state aid	18
approval; apprenticeship credits, embalming and undertaking.....	68
hospitals, laboratories, dispensaries (narcotic drugs).....	135
laboratories	10
state aid to counties	18
vaccine virus	81
commissioner of health, federal-aid funds	21
polluted water supply	57
rabies, existence of	35, 39
smallpox, existence of	80
consent, county health district	26
crippled children expense	108
death, information required	118
disease carriers, necessity of continued quarantine	45
examination and quarantine, commitment of children	83
exemption, fireproof hospital buildings	92
physician, physical examination of blood donor.....	38
vaccination	80
water escaping or discharged from canals	13
registration, birth	123
sale	43
Certification of: birth	124, 125
births and deaths properly registered	125
communicable diseases reported by health officer.....	39
Certiorari, review by	66
Chief medical officer: report discharge committed carrier of disease.....	90
Child: adopted	122
stillborn	118

	PAGE
Children: crippled	17, 108
federal-aid moneys	19
institutions for; beds, ventilation, dormitories, permit	83
examination and quarantine	83
school, vaccination	80
with impaired hearing	88
Cholera, first class city, report	39
Cities: board of health	22
business and manufactures prohibited	46
consent required, inclusion in county health district	26
laboratory area	30
first class	9, 39, 140
health officer	22
laboratories	32
rendering plants prohibited	46
tenement houses in	16
City: chief fiscal officer, certified statement crippled children expense	109
excepted, water and sewerage	57
more than 50,000 population, full-time health officer	37
more than million population, excepted	79
patients at West Haverstraw	108
representation on county board of health	26
sanitary regulations	7
third class, cemeteries	37
weeds, removal, destroy and abate	45
Civil service: dairy and milk inspectors	8
operators, public sewage and water treatment plants	8
superintendents of hospitals (state tuberculosis)	96
Cleansing and renovation after tuberculosis, expense owner or agent	89
Clerk: county; certificate exemption fireproof buildings filed with	92
oath county mosquito extermination commissioners	129
village or town, fees	125
Clinic, venereal disease	36
Coco leaves, defined	133
Code, sanitary, authorized, scope, effect, supersedes local ordinances	7
College, school or university, cadavers for dissections	85
Commission, sanitary district: appointment, organization, employees	59
bond issues, tax assessments	60
Commissioner: assistant	9
education, state; report children with impaired hearing	88
county health; appointment, qualifications, term, powers and duties	27
absence or disability	28
certificates, births and deaths	124
deputies, assistant deputies, employees	28
nuisances	41
nurse employed by town, work under direction of	28
reports of communicable diseases	29
state health; (See also Department of health, state)	
acquisition of land in emergency	14
action to recover penalties, vital statistics law	127
appointment, qualifications, term, vacancy	5, 6
appraisal, land and structures	15
apprentice in embalming, registration	68
approval: abolishment board of managers, county tuberculosis hospital	29
state aid to counties	18
laboratory service for county	30
laboratory service, state hospitals	98, 114
site, tuberculosis hospital, camp, etc., town	87
assistants, employ	8, 12, 98
autopsies	11
births and deaths, preservation of records	122
properly registered, annual certificate	125

	PAGE
boards, local, and experts, employments	13
bodies, rules for removal, death on common carrier.....	118
canals, overflow of water	13
cancer control	106, 107
carriers of disease, medical care and maintenance	45
certificate; federal-aid funds	21
of approval, laboratories	10, 33
vaccine virus	81
of consent, county health district.....	26
polluted water supply	57
quarantine disease carriers	45
rabies, existence of	31, 39
smallpox, existence of	80
state aid to counties	18
certified copies; of records	125
sanitary code	7
children with impaired hearing	88
compensation; expenses; assistants	8
consolidated health districts	23
contagious disease hospitals	10
county health district, abolishment, notice of hearing.....	29
county mosquito extermination commission; appoint members....	128, 129
estimate	130
deputize responsibility	9
deputy, appoint	6
deputy duties prescribed by commission	6
director, division laboratories and research, representative	33
district state health officers act as representative.....	10
districts, sanitary; district state health officers	9
divisions and bureaus, determine	8
embalming and undertaking;	66, 71
apprenticeship schools	68
reciprocal license	69
epidemics, inquiries as to cause	8
examinations and analyses, request health officer or physician.....	10
federal-aid administration	21
fees and fines to state treasury	70
fees to state treasury	126
food in public places, supervision of cleanliness.....	98
grants, gifts and bequests	11
health; authorities, supervision local.....	8
district board, ex-officio member	9
districts, state park	9
officer, furnish copy sanitary code regulations	7
local board fails to appoint.....	15
removal for cause	23
by county board subject to review	28
require to report on midwives	64
hearing, order to discontinue pollution of waters.....	53
Indians, relief in epidemics, audit expenses	44
industrial establishments; permission to discharge refuse.....	53
revocation of permit	54
inspections and standards, laboratories.....	33
inspectors, employ	99
laboratories, contracts with; duties with respect to.....	10
permits to handle live pathogenic germs	142
state aid, approval in writing	30, 33
laboratory substations, approval establishment	11
supply stations, district	11
maternity, infancy and child hygiene;	17
federal-aid	21

Commissioner (*Cont.*)

	PAGE
midwife, withhold license	63
midwifery license; rules and regulations practice of	62
milk and cream, permit for importation	12
contamination of supply, emergency measures	13
control and inspection	12
specialists and other employees, appoint	12
mortality, investigate sources of	8
narcotic: control, rules, regulations and determinations	134
drugs, forfeited, applications for delivery	139
record of receipt, disposal, distribution	139
New York city excepted from supervision	8
nuisances, examination upon order of governor	11
nurses, public health; employment	10
instruction	17
occupation, conflicting, not to engage in	6
order, regulation or ordinance, local, reverse or modify	8
persons procuring blood donors, prescribe form of license	38
poliomyelitis, suppression and control	19
powers and duties	6, 8, 15, 17, 21
prescribe form; application for permit to discharge sewage	53
certificate of birth	120
certificate of death	118
certified statement, expense crippled children	108
license, procuring blood donors	38
record of permit, sewage discharge	55
prescribe method vaccination; reports	81
preservation of records, births and deaths	122
prosecution delinquent physician, midwife, undertaker	127
public health council; detail secretary; member	7
qualifications established, approve	7
public health law and sanitary code, enforcement	8
publish scientific reports regarding cancer	106
rabies, certify existence	39
radium, rules for supply to staff for private patients	106
Ray Brook, annual report board of visitors	112
counties designated to be served	110
superintendent, appoint, remove	113
supervision and control	8, 108
suspension of admissions, notify courts and officers	114
realty subdivision, plat to be filed with	57
refuse discharge pipes, plans	54
registration; defective, correction	116
districts, establish	116
report, annual	15
reports industrial establishments	55
right of entrance and inspection	9
salary, expenses	8
sanitary code regulations, approve; enforce	7
sewage and water pollution	52
sewage, permit to discharge, transmit copy	53, 54
hearing, action for injunction	52, 56
sewers, sewage disposal; approve plans except state institutions	6
village, recommendations	36
smallpox, certify existence of	81
state aid; certification for	18
limitations upon	18
state institute for study of malignant diseases	106
state institutions; inspection	16, 99
outbreak of disease	16
right of entrance to kitchens	98
under control commissioner of health, Ray Brook and West Haver- straw	108

	PAGE
state tuberculosis hospitals	94
consulting staff	97
determine charge, care and treatment	95
establish maintenance rate	95
rules regarding admission of patients	94
subpoenas, issue	9
tenement houses in cities	16
term of office	6
tests for determining whether life is extinct	65
typhoid carriers	45
undertaker or embalmer suspend license	70
undertakers; examinations and licenses	67
vacancy in office	6
vaccination, approve virus, prescribe method, furnish report form	81
venereal diseases, standard of treatment	105
violations, health laws	16
violations, sewage discharge	56
vital statistics law enforcement	127
water and sewerage, realty subdivisions	57
water; supplies, orders to protect	49, 57
supply, inspection, prescribe	48
West Haverstraw; establish rates	108
regulations regarding admission of patients	108
rules, bequests, etc.	109
superintendent; appoint, remove	112
supervision and control	8
witnesses, compel attendance and testimony	9
Commissioner of health, deputy: appointment, duties, qualifications	6
certify copies of sanitary code	7
hearing tuberculosis hospital site, town	87
power and authority, midwives	64
revocation license, midwife	63
Commissioners, mosquito control	41
Commitment: addicts, narcotic drugs	140
carriers of disease	90
dangerous and careless patients, tuberculosis	90
Common carriers, deaths on; removal of bodies	118
Communications to physicians not deemed confidential, narcotic drugs	134, 140
Compensation: members board of health	23
and expense, officers and employees, state department of health	8, 33
health officer	24, 34
public health council	7
Comptroller, state: acquisition of lands in emergency	14, 15
monthly list of free patients, Ray Brook	109
state aid: to counties	19
to laboratories	33
warrant	21
Condemnation proceedings	14, 32, 61
protection water supplies	51
Conference: expenses of health officer attending	34
health officer to attend	37
health officers with district officer	9
Consolidated health district, compensation members board of health	24
Consultants, state tuberculosis hospital, appointment; duties	98
Consultations for mothers and children	17
Corporation counsel, service certificate water pollution	57
Coroner: deaths without medical attendance	118
Council, public health: appointment, compensation, qualifications, powers and duties	6, 7
carriers of disease	45
county health commissioner, prescribe qualifications	27
health officers, prescribe qualifications	23, 24

	PAGE
hospitals for contagious diseases, regulations	11
laboratories, standards and qualifications	10
sanitary code	7
tuberculosis reports, authorize use	39
Counties, state aid to	18
County: admission state institutions in ratio to population	114
board for appointment mosquito extermination commission	128
bond issues	60
clerk: affidavit, publication water supply rules and regulations	48
certificate, fireproof hospital buildings	92
certified copy; determination of vote, sanitary district	59
map and certificate filed with, acquisition of land	14
permit to discharge sewage, recorded	53, 54
department of health, excepted water and sewerage	58
health district authorized	26
laboratory: in health district coterminous with county	29
state aid	30, 32
supply stations, district	11
medical society, county health district	26
mosquito extermination commission	128
officer, abatement of nuisances	12
patients at West Haverstraw	108
state aid, public health work	18
subdivision map, water supply, sewage	58
treasurer; certified statement crippled children expense	109
report state aid, refund	20
tuberculosis hospitals; annual survey	95
board of managers may be abolished, county health district	29
courses for superintendents	96
maintenance at state hospital	95
Courses for superintendents of county tuberculosis hospitals	96
Court: of claims, jurisdiction, lands taken in emergency	15
certificate of birth, certified copy	122
forfeited narcotic drugs	139
Cremation	119
Cultures, diphtheria release, additional compensation health officer	34
Custodian, laboratory supply station	11
Custody and payment of funds, federal aid	21
Damages, buildings removed	50
confining or killing dog	40
destruction or injury to property	37
Death certificate	118
certified copies of records	125
from tuberculosis, report	89
registration	115, 123, 124
Deaths without medical attendance	118
Definitions:	15, 53, 132
county board of health, department, health districts, etc.	26
funeral directing, undertaking, embalming	71
health district	106
juvenile delinquents	83
laboratory, approval	18
municipality	11, 23
narcotic drug act	132
nuisance (house of prostitution)	99
owners, suppression of nuisances	100
sewage	53
state department of health	16
tuberculosis as communicable disease	90
undertaker	67, 71
Dentist: live pathogenic germs	142
narcotic drugs	132, 135, 136

	PAGE
Department of health:	
county	26
excepted, water and sewerage.....	58
state (See also commissioner of health, state).....	5, 16
actions, proceedings and authority judicial.....	8
acting health officer, report.....	35
compensation officers, employees.....	8
continue in state government	5
disease; communicable, reports county health district.....	29
infectious, contagious or communicable, reports.....	39
smallpox, typhus, yellow fever and cholera, first class cities.....	39
divisions and bureaus authorized.....	8
embalmers and undertakers, examinations.....	66
embalming and undertaking, forms furnished for registration.....	68, 69
functions, powers and duties.....	6
grants, gifts, bequests	11
head to be health commissioner.....	5
hospitals, state tuberculosis, under jurisdiction.....	94
institutions; for children, approve inspection form.....	83
state, jurisdiction supervision and control.....	108
laboratories, expense of supervision and inspecting.....	33
laboratory supply station, certification.....	11
mandamus	45
narcotic drugs; enforcement and cooperation.....	141
prescribe record form	138
order to convene local board	41
poliomyelitis cases, certified for treatment.....	20
registration, places where live pathogenic microorganisms are handled..	142
reorganization	6
sewage, examination into discharge	57
sewer system modification	54
sewers, etc., approve plans except state institutions.....	6
sewers and sewerage	6, 36, 49, 51, 52, 54, 55, 56,
water rules, notified of violation	49
water supplies, rules and regulations for protection.....	48
Department of taxation and finance, custodian federal-aid funds.....	21
Departments of health, city.....	46
Dining car, food preparation and service	98
Dining room, food preparation and service.....	98
Diphtheria carriers:	90
release cultures, additional compensation.....	34
Director: approved laboratory, qualifications.....	10
county laboratory	32
division of laboratories and research, inspection and standards of labora-	
tories outside New York City.....	33
laboratories receiving state aid (excepting New York City).....	33
Directors, division	79
Disease: blood donor to present certificate of freedom from; penalty.....	38
carriers of; care and maintenance, expenses.....	45, 90
committed cases, control of	90
cities, first class (smallpox, typhus fever, yellow fever, cholera).....	39
communicable; case and death reports, county health district.....	29
reports by physicians	36
laboratory examination discloses	39
contagious or infectious; outbreak in institutions.....	83
relief of Indians, epidemic	44
designated in sanitary code	38
fees for reporting	39
infectious, contagious or communicable, general provisions.....	38
commissioner to inform registrars.....	122
death from, burial or removal permit.....	122
registrar to report	122

	PAGE
infectious venereal; detention of suspects; free treatment.....	104
isolation and treatment	105
magistrate, order restraining examination of suspect.....	104
medical examination, person convicted certain offenses.....	104
reports confidential	105
rules and regulations	105
treatment only by physicians or on their prescriptions.....	105
treatment required	105
pestilential, infectious or contagious in almshouse.....	39
venereal, additional compensation health officer.....	34
exception, municipality having clinic.....	36
sexual intercourse with person in naval or military service a felony..	105
Diseases: certain contagious (venereal).....	104
communicable, reports laboratory examinations.....	39
contagious and infectious; public health nurses.....	10
relief of indigent Indians	44
malignant, state institute for study, Buffalo:	106
board of visitors, membership, duties, expenses	106
director, appointment, qualifications.....	107
gifts and trusts	106
investigations and treatments	106
prevalent, duty of health officers	36
Dishes or containers for food	98
Disinfection, cleansing or renovation of premises, tuberculosis.....	89
Dispensary, approval, narcotic drugs	135, 137
Dissection, cadavers	84
District: consolidated health; establishment, powers.....	24
expenses	25, 26
in county health district	28
county health;	26
city not to be included without consent.....	26
expenses	29
local health districts within	28
registration vital statistics	124
supervisors may abolish after three years.....	29
village boards of health	28
withdrawal of city	28
health, authorized	9
defined	106
sanitary	58
cities of first class excepted	9
joint disposal of sewage.....	58
petition for election.....	58
right of way	61
state park health	9
Districts less than 50,000 population, reports infectious and contagious or communicable disease	39
registration, vital statistics	115
Divisions, state department of health	8
Dogs	39
Dormitory permits; beds; ventilation	83
Drainage, removal mosquito breeding places	42
Drugs, narcotic (Art. XXII):	
acquittal, conviction under federal laws, effect.....	141
acts prohibited	134
addicts; commitment, procedure, discharge	140
in first class city	140
not to be licensed	135
not to be funeral director, embalmer or undertaker.....	75
resorts of, deemed common nuisance	139
advisory board	134
apothecary	133, 136, 137, 138
sale by	136

	PAGE
apparatus for use of opium, possession	141
certificate of approval, hospital, laboratory, dispensary	135
official, discharge committed addict	140
communication to physician not deemed confidential	134, 140
constitutionality	141
conviction, notice of, to licensing authority	139
definitions	132
dentist	132, 135, 137, 138, 140
dispensary; approval	137
drugs, authorized possession by individuals; limited	136, 138
definitions	132
excepted (heroin and its salts)	137
exempted	136
forfeited, disposition	139
lost, destroyed or stolen	138
obtaining from one physician while under treatment from another	141
professional use	136
return of unused portions	136
employees, state and other	135
enforcement and cooperation	141
exceptions and exemptions not required to be negatived	140
fraud or deceit	140
hearing, revoke or suspend license	134
interne	136
interpretation and construction of article	141
labels	138
laboratory, person in charge	135
license, qualifications for	134
laws, inconsistent, repeal of	141
manufacturers and wholesalers	134
master of ship or aircraft	135
nurse	136
order forms	133
orderly, administer under supervision veterinarian	136
orders: hospitals	136, 139
sale on	135
penalties	141
persons and corporations exempted	138
physicians	132, 134, 135, 136, 137, 138, 140, 141
prescriptions; not to be refilled	136
written, sale on	135, 138
record to be kept	137
records confidential	139
reinstatement, license or registration	139
rules and regulations and determinations, commissioner of health	134
sales on written orders	135
upon written prescriptions	136, 138
supervisor and investigators, powers of peace officers	134
cooperate with federal and state officers	141
uniform act	132
veterinarian	132, 135, 136, 137, 138, 140
Drug store, cleanliness in preparing food	98
Dwellings boarding tuberculosis cases, certification	92
Election, petition for, sanitary district	59
Embalmer and undertaker: registration; penalty default	69, 74
not eligible as registrar, deputy registrar or subregistrar	116
registration with board of health	69
Embalming and undertaking; additional fee for undertaker license	68
apprenticeship, technical training	68
definitions	71
disposition of fees, fines and penalties	70, 74

	PAGE
examination questions	66, 72
penalties	70
qualifications for licenses	66, 72
reciprocal licenses	67, 73
record of license	67
revoking or suspending license	75
Enforcement public health law and code	7, 8, 9
Engineer and surveyor, state, former powers, assign to health department....	6
Engineer, sanitary, on public health council	6
Entrance and inspection	11, 41, 42, 48, 55, 93, 98, 130, 134, 139, 141
Epidemic, relief of indigent Indians	44
Epidemics, commissioner to inquire into cause	8
Examination and inspection, public works	14
Examinations, laboratory, tuberculosis, results confidential	39, 89
upon request health officer or physician	10
Expense of abatement public nuisance	12
disinfection, cleansing or renovation	90
nuisance removal	43
removal mosquito breeding place	41
Expenses: consolidated health district	25, 26
correction defective registration	117
county health district	29
disease carriers, care	45
health officers attending conferences	34
Indians, indigent	44
laboratory, board of managers	31
supply station	11
local board fails to appoint health officer	15
local board of health	44
members public health council	7
mosquito extermination commission	129
rabies	35
registrar of vital statistics	116
removal mosquito breeding places	41
sanitary district commissioners, employees	59
sewers, village	36
smallpox	34
typhoid carriers	45
Experts, sanitary, employment	14
Factory wastes	54
Federal-aid, administering	20
Fee: certified copies of records	124, 125
default of registration, embalming and undertaking	70
dogs, seized, confined and killed	40
embalming and undertaking, apprenticeship	68
license to practice embalming, undertaking	66
registration, embalmers and undertakers	69
undertaking firm	69
reporting births and deaths	124, 127
infectious and contagious or communicable disease	39
Fees, consultants, sanitary district commission	61
Fertilizer plants, prohibited in cities	46
Fire: alarm boxes, hospitals, schools, etc.	93
department, certify buildings fireproof	92
written notices	93
escapes, hospitals, sanatoria, etc.	92
Food, cleanliness in preparation and service	98
Funeral: directing, practice of	71
establishment, operating	75
Gifts, and trusts, grants, bequests	11, 21, 96, 106, 109, 110

	PAGE
Governor: annual report to.....	15
appoint; commissioner of health.....	5
public health council	6
state institutions, board of visitors.....	106, 111
approval, acquisition of land in emergency.....	14
order to discontinue pollution of waters.....	53
nuisances declared	12
public health council, designate chairman.....	7
tenement houses, cities	16
Grants: federal-aid funds	20
gifts and bequests.....	11, 21, 96, 106, 109, 110
Health officer: absence not exceeding three months.....	35
acting	35
additional compensation	34, 81
annual sanitary survey	36
appointment; qualifications; term; removal.....	22
assistants; compensation	35
assistants or deputies, cleansing and disinfection.....	89
births and deaths, registration.....	36
carriers of disease under surveillance.....	45
chief executive officer of board.....	34
cities; first class, smallpox, typhus, yellow fever, cholera.....	39
second and third class.....	32
city more than 50,000 population, full time.....	37
commissioner of health to act where board fails to appoint.....	15
communicable disease; deaths from.....	104
guard against introduction	38
reporting	29, 39
secure prompt and full reports.....	36
compensation, expenses	34
conference attendance	34, 37
consolidated health district	24
county health district	26
custodian laboratory supply station	11
daily reports to county health commissioner.....	29
deaths without medical attendance	100
disinfection of premises (tuberculosis)	89
district state; appointment and duties	9
certificates, births and deaths.....	105
conferences with health officers	9, 37
qualifications	7
representative of commissioner of health.....	10
entrance and inspection, right of.....	41
examinations and analyses upon request.....	10
exemption from personal liability.....	37
failure of local board to appoint	15
general powers and duties	36
jurisdiction, district health officer to adjust questions of.....	9
laboratory, report to, communicable disease.....	39
local, powers and duties, compensation.....	34
medical certificate of death.....	101
midwives, report conduct of.....	63
not to be sued	37
nuisances, investigate and report.....	41
nurses, public health, employ	37
penalty, recover	86
persons procuring blood donors, license.....	38
places of public assemblage; inspection, report.....	36
poliomyelitis, suppression and control	19
powers and duties, general	36
qualifications	7, 15, 24

	PAGE
rabies; prevention of spread	39
report, confining or killing dog	40
suppression, expense	35
registrar, serve without additional compensation	116
removal	28
reports; cancer and malignant tumor	40
confidential	105
infectious and contagious or communicable disease	38, 39
sanitary code regulations to	7
sanitary supervision	32
secretary consolidated health board	24
spread health information	36
state park health district	9
town, hearing tuberculosis hospital site	87
tuberculosis:	
cleansing, renovation and disinfection	89
dangerous and careless patient; notice; commitment	90
duties imposed upon physicians	91
placard infected premises	90
recovery of patient, report	91
register	89
require physician to take additional precautions	91
sputum examinations, report	88
vacation of premises reporting	89
vaccination; how made; reports	81
additional compensation	81
written reports presumptive evidence	37
Hearing: abolish county health district	29
bond issue	60
commitment dangerous and careless tuberculosis patient	90
order to discontinue pollution of water	53
petition, sanitary sewer	59
removal; county health commissioner	27
health officer, county health district	28
member board of visitors, Ray Brook	111
revocation license; embalming, undertaking	76
midwife	63
revocation permit to discharge sewage	54
revoke or suspend license (narcotic drugs)	134
site tuberculosis hospital or camp, town	87
violation sewage discharge	56
withdrawal of city from county health district	28
Hermann M. Biggs memorial hospital	94
Homer Folks tuberculosis hospital	94
Hospital: buildings, iron stairways; fireproof certificate	92
camp, etc., tuberculosis; approval of site, town	87
cancer and other malignant tumor	40
cancer control, facilities	107
county tuberculosis, board of managers may be abolished, county health district	29
defined	133
dissection; cadavers	84
drugs; application for forfeited narcotic	139
approval, narcotic	134
narcotic, sale to	136
fire alarm boxes	93
for contagious diseases; recommendations and inspection by commissioner	10
public health council may regulate	11
infectious and contagious or communicable diseases	38
iron stairways	92
like privileges to matriculated students medical colleges	93
medical staff excepted	70
or dispensary, request sputum examination	88

	PAGE
or sanatoria, tuberculosis, report infectious and contagious or communicable disease	39
registration of persons in	121
state, for crippled children, West Haverstraw	108
for incipient tuberculosis, Ray Brook	109
for treatment of cancer and allied diseases	108
registrar vital statistics	115, 116
tuberculosis, aid to county hospitals	96
admission of patients	94
authorized	94
consulting staff	97
control in the department of health	94
custody of property	96
laboratories, use by municipalities	98, 114
superintendent, powers and duties	96
typhoid carriers, care	45
Hotels: bedding, sheets, towels	79
cleanliness, food preparation and service	98
sewers and drainage; ventilation	79
Indian reservations, inspections	10
sanitary code may include provisions	7
Indians, indigent, relief in epidemic	44
Industrial establishments: penalty discharge without permit	56
permission to discharge refuse	54
reports evidence of exemption	55
revocation of permit	54
Information, health	17, 36
Inquest, coroner's	118
Inspection: hospitals for contagious disease	10
hotels	79, 98
institutions for children	83
public, penal or charitable	98
laboratories, supply stations and substations	11
places of public assemblage	36
public eating places	98
public works	14
records, etc., narcotic drugs, by officials	139
right of entrance and	11, 41, 42, 48, 55, 93, 98, 130, 134, 139, 141
sewage and waste discharge	55
watersheds	48
Inspectors: dairy and milk; qualifications	8
not subject to suit	37
written reports presumptive evidence	37
Institute for study of malignant diseases, state	106
Institutions: charitable or penal, registrar vital statistics	115
children's monthly examinations, reports	83
dissection	85
examination and quarantine children admitted (except hospitals)	83
public, state aid for	18
public, penal or charitable, food preparation and service	98
registration of inmates	121
report infectious, contagious or communicable disease	38
state; employees as special policemen	113
examination and inspections	16
excepted, sewer and sewage disposal plants	6
in the department (Ray Brook and West Haverstraw)	108
report infectious and contagious or communicable disease	16, 38
sewage	50
supervision and control commissioner of health	8
water supply and inspection	48
United States, sewage	50
water supply and inspection	48

	PAGE
Interments	119
in cemeteries, 3rd class cities	37
Interne, administer narcotic drugs under direction physician	136
Judge of children's court, admission West Haverstraw on order of	108
Justice Supreme Court, petition for election	58
Juvenile delinquents: defined	83
institutions for	83
Label: live pathogenic microorganisms or viruses	142
narcotic drugs	138
Labor camp, inspection	10
Laboratories: approval, narcotic drugs	135
blood test of pregnant woman for syphilis	18
branch, authorized	32
certificate of approval, examinations and analyses	10
contracts with, standards, approval	10
county, area to be served; fee	29
board of managers: expenses	31
may be abolished, county health district	29
establishment; referendum	30
cultures, live pathogenic germs; registration places handling	142
defined	18, 133
director or bacteriologist in charge; powers	31
qualifications	10
employees, appointment, removal	32
establishment; duties of commissioner	10
examinations, persons suspected, infectious venereal disease	104
examinations, reports communicable disease	39
tuberculosis confidential	39
except New York City, inspection and standards	33
in cities	32
narcotic drugs only for use by or in, on written order	136
powers; of boards of managers	31
of supervisors	30
records	39
service county authorized	30
serving less than county, expenses	29
standards established by public health council	10
state aid	33
state hospitals, use, municipalities	98, 114
supervision, except New York City	33
supply station; distribution supplies to physicians; custodian	11
viruses other than vaccine virus	142
Land, acquisition of	14
Lands	96
Liability, personal exemptions from	37
License: embalming and undertaking	66
manufacturers and wholesalers, narcotic drugs	135
persons procuring blood donors	38
practice midwifery	62
Lien upon premises: abatement of nuisance	12, 43
removal mosquito breeding places	41
Lieutenant governor, appeal board, hospital site, town	88
Life, preservation of, seashore bathing places	82
Lifelines, seashore, bathing places	82
Magistrate, commitment of narcotic drug addict	140
Mandamus	45
Manufacturers and wholesalers, narcotic drugs, license	134
Marihuana	138
Maternity, infancy and child hygiene:	17
federal-aid moneys	20

	PAGE
Mayor, service certificate, water pollution	57
Medical attendance, disease carriers.....	45
Medical college: cadavers	85
graduate as health commissioner	5
like privileges in hospitals	92
Midwife: annual registration	121
birth, registration of	119
failure to file birth certificate; fee; prosecution.....	126
fees	124, 125
licensing and registration	62
New York City and Rochester excepted.....	64
not to practice.....	63
not to sign death certificate, stillbirths	118
practice limited, normal labor only.....	63
qualifications	62
renewal of licenses	64
required to supply information regarding birth or death.....	122
sanitary code may regulate practice.....	7
supervision and training	17
withholding license; revocation	63
Milk and cream: importation	12
investigation, study and survey	12
Milk: control and inspection	12
specialists and other employees	12
supply, emergency measures to protect	13
misdemeanor, violation sanitary code.....	7
Mosquito breeding places	41
Mosquitoes, extermination	128
Mothers and children: consultations in rural districts.....	17
information through instruction by physicians, nurses, publications.....	17
Municipalities, actions by, sewage discharge	56
Municipality defined	11
Narcotic drug act (see also Drugs).....	132
New York City: admissions state institutions, ratio to population.....	114
bathing places	82
excepted	7, 8, 45, 64, 82, 92, 93, 105, 140
exempted	128
federal-aid funds	20
inspection of water	48
poliomyelitis, suppression and control	20
rules and regulations protection water supply.....	48
venereal disease	18, 105
New York State hospital for the treatment of incipient tuberculosis, Ray Brook	108
New York State reconstruction home, West Haverstraw.....	108
Notice: injunction, house of prostitution.....	100
of membership, local board of health.....	23
posting and publication, hearing, sanitary district.....	59
publication, hearing tuberculosis hospital site.....	87
service; owner of property, abatement of nuisance.....	43
person violating water rules	48
upon careless tuberculosis patient	73
Nuisances	11, 41
carelessness of person having tuberculosis.....	90
cities	46
common, resort of drug addicts	139
expense of abatement lien upon premises	41
house of prostitution	99
investigation ordered by governor	12
member of board to assist in examination, cities	13
mosquito breeding place	130

	PAGE
orders and regulations for suppression.....	34
removal	41, 43
weeds and noxious growths	46
Nurse: administer narcotic drugs under direction physician.....	136
employment, maternity and child hygiene	17
exemption from personal liability	37
instruction of	17
of mothers by	17
not to be sued	37
public health, commissioner may employ and assign.....	10
employment by health officer.....	36
by town board in county health district.....	28
work under direction health officer.....	37
report child with impaired hearing.....	88
written reports presumptive evidence.....	37
Officer, administrative	9
county, abatement public nuisance.....	12
Opium, apparatus for use.....	141
defined	133
Order or ordinances, local, commissioner of health may reverse.....	9
to discontinue pollution of waters.....	52
Orderly, administer narcotic drugs under supervision veterinarian.....	136
Orders, local board of health.....	34
prescription narcotic drugs, records confidential.....	139
written, sale of narcotic drugs.....	135
Ordinance, local, sanitary code supersedes.....	7
Orphanage, examination and quarantine children admitted.....	83
fire alarm boxes	93
Orthopedic hospital, state, medical supervision and control.....	8
(see New York state reconstruction home, West Haverstraw)	
Parent or guardian, report children with impaired hearing.....	88
Park: state, bathing beaches excepted.....	83
health districts	9
Pathologists, qualifications	10
Penalty: carelessness person having tuberculosis.....	90
failure to register, embalming or undertaking.....	70, 77
false statement or report by physician, tuberculosis.....	91
food, preparation and service, public places	98
health officer, recover from medical colleges, etc.	86
house of prostitution	102
sanitary code violation	7
sanitary conditions, hotels.....	79
violation; health law or regulation.....	16
order or regulation local board.....	35
state sanitary code	7, 35
tuberculosis law	91
venereal disease law	105
vital statistics law.....	127
Permit: burial or removal	117, 119
discharge sewage	53, 54
importation milk and cream.....	12
industrial establishment, refuse or waste.....	54
Physician:	
acting health officer, three months.....	35
admission of patient to state tuberculosis hospital.....	95
annual registration	121
birth and death, required to supply information regarding.....	122
birth, registration of	120
blood test of pregnant woman; syphilis.....	18
cancer control, cooperation	107

	PAGE
certificate;	13
employment	126
physical examination, blood donor	38
vaccination	80
commissioner shall be	5
communication to, not deemed confidential	134, 140
complaint careless tuberculosis patient	91
death, medical certificate	118, 119
deaths from infectious, contagious or communicable disease	122
defined	132
deputy commissioner shall be	6
failure to file certificate; fee; prosecution	126
fees	124, 125
in charge, institutions, specify disease	121
laboratory; examinations and analyses upon request	10
county, on board of managers	31
supplies	11
licensed and approved; examinations and treatment venereal disease suspects	104
institutions for children	83
members of county board of health	27
live pathogenic germs	142
midwife to secure, other than normal delivery	63
narcotic drugs;	136
obtaining from one, under treatment from another	141
notice vacation of premises by tuberculosis case	89
on local board of health	22
on public health council	6
or surgeon, excepted	70
organizations of, district health officer to enlist cooperation	10
report; cancer and other malignant tumors	40
children with impaired hearing	88
infectious or contagious and communicable disease	38
recovery of tuberculosis patient	91
vaccination	81
violation	84
sanitary code regulations not to discriminate against	7
stillbirths	118
superintendent state tuberculosis hospital	96
tuberculosis; complaint, careless tuberculosis patient	90
examination of patients for Ray Brook hospital	110
failure to perform duty; false reports	91
health officer to report results of examination	89
penalty false report	91
protection patient's family	91
report recovery patient	91
request sputum examination	88
statement procedure and precautions	91
vacation of premises by case	89
Places of public assemblage, inspections, report	36
Plans: and specifications, water, sewerage, realty subdivisions	57
public works	14
refuse discharge pipes	54
sewage and sewage disposal	53
Plumbing and drainage: hotels	79
institutions for children	83
Poliomyelitis: suppression and control	19
Potable waters	47
Powers, functions and duties, commissioner of health	12
Practice prohibited, embalming or undertaking	70
midwives	63
Pregnant women, blood tests for syphilis	17

	PAGE
Prescription: dating and cancellation, narcotic drugs	136
not to be refilled	105, 136
orders, records confidential	139
Property destroyed, action for damages	37, 50
Prostitution, houses of	99
Public works, examination and inspection	14
Publication: notice; of hearing	53, 59, 60, 76, 87
of sale	43
of notice	14, 100, 130
orders and regulations	34
rabies notice	35
regulations sanitary code	7
water rules and regulations	48
Publications, instruction of mothers through	17
Quarantine: acquisition of land for	14
establishment	39
typhoid carriers	45
Rabies: certification of existence	40
expenses of health officer	34
prevention of spread; expenses	40
Ray Brook, state hospital for incipient pulmonary tuberculosis	8, 108, 110
Realty, subdivisions, water and sewerage service	57
Record: certified, prima facie evidence	126
confidential; laboratory examinations tuberculosis	39
narcotic drugs	139
venereal disease	105
district	123
drugs, narcotic received, dispensed, etc	137
tuberculosis	88
Referendum, county laboratory	30
Refuse discharge pipes	55
Register, tuberculosis	89
Registrar of vital statistics: appointment, qualifications	116
birth registration	120
bodies removal, death on common carrier	118
burial or removal permits	117, 119, 123
certification of birth	124
certified copies of records, prima facie evidence	126
combined districts; appointment, remuneration, expenses	115
commissioner of health to provide blanks, forms, instructions	122
consolidated health district	25, 116
correction of defective registration; expense	117
county or state health district	124
death certificate	118, 123
deaths from; communicable disease	29
infectious, contagious or communicable disease	123
deputy appointment	117
district records kept by	123
enforcement vital statistics law	127
expenses	116, 125
fees	118, 124, 125
health officer eligible without additional remuneration	116
interment within state	119
midwife, licensed, register with	62
penalties	127
physicians; midwives, undertakers or informants to supply information regarding birth or death	122
midwives, undertakers, registration	121
record book	122
registration districts	115

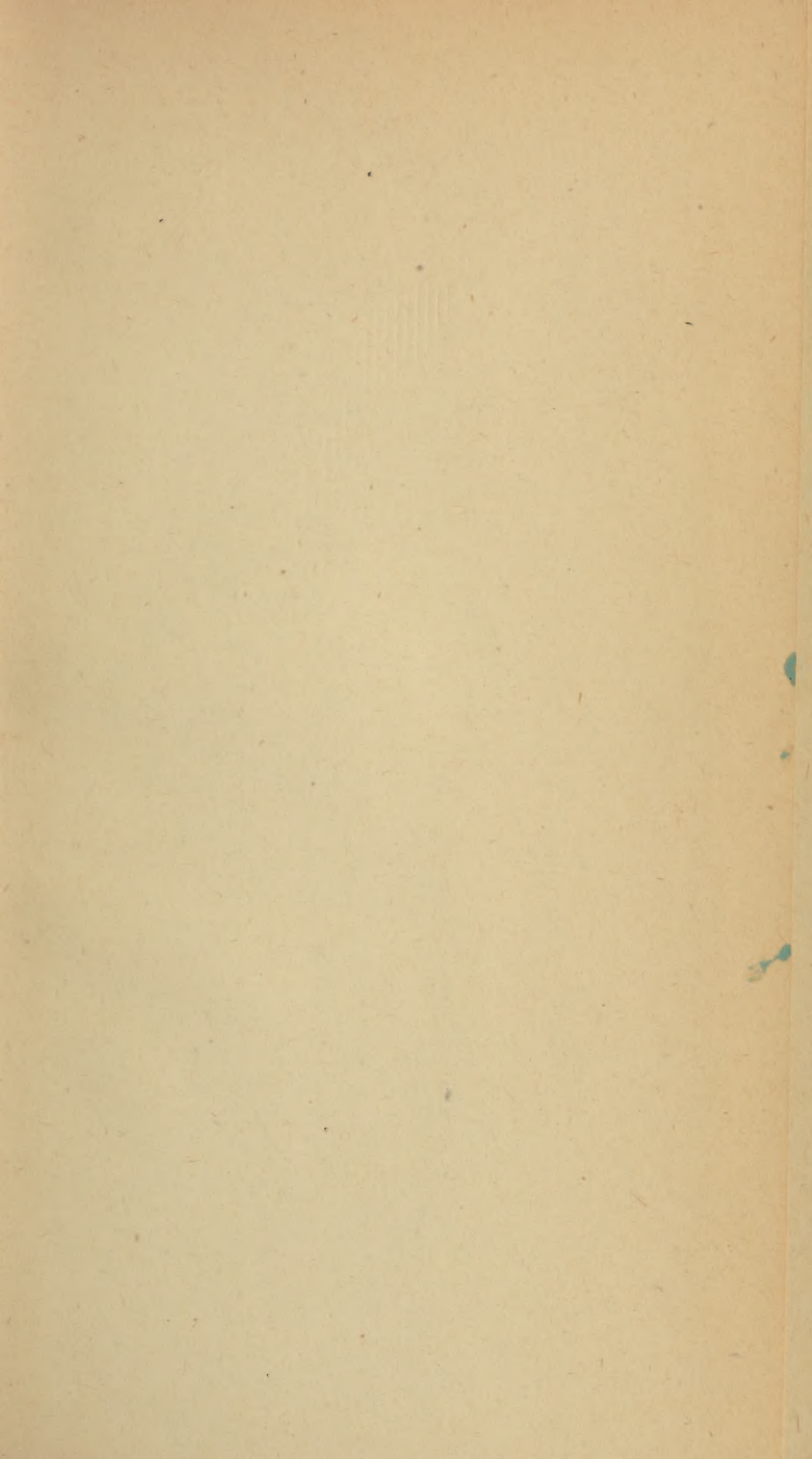
	PAGE
removal by commissioner of health	116
report monthly	124
rules and regulations public health council	117
state hospital, charitable or penal institutions.....	116, 124
stillborn children	118
subregistrars, appointment, duties, removal.....	116
supplemental report, given name of child.....	121
term of office	116
town board may appoint	117
town clerk eligible	116
undertaker or embalmer not eligible.....	116
Regulations: for cleansing, disinfecting, renovating.....	73
local board of health;	7, 34
commissioner of health may reverse or modify.....	9
sanitary (sanitary code) authorized	7
Rendering plants prohibited, cities	41
Report: annual;	15
abstract of reports regarding contagious disease hospitals.....	10
cancer institute	107
county laboratory	31
county mosquito extermination commission; publication	130
county fiscal officer, state aid.....	19
Ray Brook and West Haverstraw, boards of visitors.....	112
treasurer	114
cancer and malignant tumors, confidential.....	41
communicable disease	29, 36, 39
health officers and employees, regarding midwives, prima facie evidence.....	63
laboratory examinations confidential, tuberculosis	39
poliomyelitis cases, persons 21 and over	20
scientific, regarding cancer	106
venereal disease, confidential	39
written, of health officials, presumptive evidence	37
Restaurant, food preparation and service.....	98
Right of entrance:	9, 14, 38, 42, 48, 93, 97, 130
and inspection	55, 134
Rights, riparian	58
Rochester excepted	64, 93
Rules and regulations: admission to Ray Brook and West Haverstraw.....	108
county laboratory	31
embalming and undertaking	66, 76
epidemic among Indians	44
federal aid	21
food, preparation and service	99
for cleansing, disinfecting, renovating	89
laboratory supply stations	11
midwifery	63
public health council, registration, births and deaths	115
sanitary (sanitary code) authorized	7
sanitary district	61
typhoid carriers	45
venereal disease	105
violations	16
water supplies; protection of	43
legalized	49
Rules, removal of bodies, death on common carrier	118
Sanitary code: authorized, scope, copies, effect	7
examinations approved laboratory	10
of New York City excepted	41
violations	7, 16, 66
School authorities accept birth certificate as evidence of age.....	123

	PAGE
Schools: certificate of vaccination	80
embalming and undertaking apprenticeship	68
fire alarm boxes	93
for deaf	88
medical, like privileges in hospitals	92
Secretary: county health district	27
public health council	6
sanitary district commission	59
Secretary of state: report of nuisance	12
state park health district	9
Senate, consent to appointment of health commissioner	5
Sewage:	49
action by municipalities to prevent discharge	56
defined	53
discharge; into certain waters prohibited	52
into Susquehanna near Binghamton prohibited	51
into Wallkill Creek prohibited	51
joint disposal of;	58
acquiring property rights of way	61
bond issues, taxes	60
commission, appointment, organization	59
duties, employees	60
election	59
partial invalidity of article	61
rules and regulations authorized	61
supreme court justice to fix boundaries	59
territory included in sanitary district	58
permission to discharge	54
revocation of permit	54
treatment plants, public; qualifications of operators	8
Sewerage, state department of health, powers and duties	36, 48, 49, 50, 52, 53, 57
Sewers: and drainage, hotels	79
approval of plans, except state institutions	6
bathing establishments	81
in public streets, roads and highways	61
sanitary district	58
systems exempt	55
village	36
Sheets, bedding and towels, hotels	79
Slaughter houses and rendering plants	46
Smallpox, additional compensation	34
existence, certification by commissioner	80
report, first class city	39
vaccination, cities 50,000	80
vaccine virus	39
Soda fountains: cleanliness in preparing food	98
Social security assistance	20
Speaker of assembly, appeal board tuberculosis hospital site	88
Sputum examinations	88
Stairways, iron, on hospital buildings	92
Standards: of construction, equipment, etc., state aid	18
of service	21
State aid: counties engaged in public health work	18
institutions, public	18
laboratories	30, 33
poliomyelitis, suppression and control	19
sanitary districts, duties of commissioner	9
Steamboat, food preparation and service	98
Stillbirths: midwives not to sign death certificates	118
registration	118
Subdivisions, realty, sewer and water service	57
Subpoenas	9, 35, 66, 76

	PAGE
Subregistrar, appointment, duties, removal	116
Superintendent, county tuberculosis hospital, courses at state hospital.....	96
public works, acquisition of land in emergency.....	14
overflow of water from canals.....	13
survey upon request of commission	14
state tuberculosis hospitals	96
Supervisors, board of, annual report county laboratory.....	31
chairman ex officio member mosquito extermination commission.....	129
clerks and assistants mosquito extermination commission.....	130
consolidated health district	24
county bonds	60, 61
county health district	25
county health district coterminous with county	29
county tuberculosis hospitals	95
laboratory or laboratory service, state aid.....	10, 29, 30, 31
patients West Haverstraw, accounts of.....	108
petition for bond issues	60
Supreme court, action to enjoin nuisance	100
approval certiorari	54
injunction to stop discharge of sewage.....	57
Surgeon, excepted	70
Survey, annual, county tuberculosis hospital.....	95
annual sanitary, by health officer.....	9, 36
source of supply, milk and cream	12
Surveys and studies	17
Suspects, venereal disease, treatment.....	104
Susquehanna river, discharge of sewage prohibited.....	51
Tenement houses in cities	16
Towels, individual, in hotels	79
Town, sanitary regulations	7
Towns, town board	23
Transfusion; blood donor; certificate; license; penalty.....	38
Treasurer, county: certified statement crippled children expense.....	109
fees, fines and penalties	70
funds from county, West Haverstraw	108
laboratory expenses, county not having purchasing agent.....	32
report state aid, refund.....	19
state refunds, state aid to counties.....	19
Tuberculosis: carelessness prohibited.....	90
carrier	90
control dangerous and careless patient	90
disinfection of premises	89
disorderly patient	91
health officer	89, 90, 91
hospital; commitment dangerous patient; discharge.....	90
in county health district	29
laboratories, use, municipalities.....	98
site in town	87
state, admission of patients	94
maintenance of patients	95
penalty failure physician to perform duties; false report.....	91
placarding premises	90
protection; of patient's family	91
of records	88
Ray Brook, admission	109, 114
register of cases	89
reporting recovery of patient	91
reports confidential	39
sputum examination	88
Typhoid fever carrier	45, 90
Typhus fever, report, first class cities	39

	PAGE
Undertaker: annual registration	121
deaths without medical attendance	118
defined	67
dissection; cadavers	84
duties	126
embalming, practice of	66
examination	67
failure to file certificate; fee; prosecutions	119
interment within state	119
licensing, etc.	66
qualifications	66
required to supply information regarding death	119, 122
suspension of license	70
Undertaker or embalmer, not eligible as registrar, deputy or sub-registrar	116
University of Buffalo	106
United States medical officer, excepted	70
Vaccination: additional compensation	81
state commissioner of health to prescribe method	81
vaccine virus, board of health to provide	39
Venereal disease: clinic	36
pregnant women, blood tests for syphilis	17
reports, confidential	39
suspects, treatment required	105
Ventilation: hotels	79
institutions for children	83
Veterinarian: certificate, importation milk and cream	13
live pathogenic germs	142
narcotic drugs; record	136, 137
Village: in health district	28
sanitary regulations	7
Viruses, handling (other than vaccine virus)	142
Vital statistics: division of	115
provisions relating to (see also registrar)	115
Wallkill Creek, discharge of sewage prohibited	51
Warrants, board of health	35
Water: and sewerage, realty subdivisions	57
inspection	48
supplies, orders by commissioner of health	57
supply; New York City, limitations on sanitary control	51
removal of buildings	50
right of entrance	49
rules and regulations; protection of water	48
legalized	49
of department	48
sewage	49
treatment and purification plants, public, qualification of operator	8
Waters, potable	47
Weeds, danger to public health, removal	45
Welfare officer: epidemic of contagious or infectious diseases	44
report children with impaired hearing	88
Westchester county: rabies suppression, expense	35
trunk sewer plans (footnote)	53
West Haverstraw, New York State Reconstruction Home	108
supervision and control state commissioner of health	8
Witnesses: board of health may compel to attend and testify	35
commissioner of health	9, 72
Yellow fever, report first class cities	39





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